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# **The Concept of State and Law in Seneca's Work and Their Implications in the Development of Human Society**

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**ABSTRACT:** The philosopher, and especially the artist, thanks to the expressive force of his writing, Seneca was one of the great masters of the European cultural tradition that inspired Petrarca and Calderon, Shakespeare and Corneille, Rousseau, who owes the very idea of confession. Seneca's philosophical, political and legal conception is a true key to the correct understanding of the evolution of natural law in the legal and supreme concept of understanding the „true reason” of the wise man of virtues. It analyzes the development of human rights that arise from the rights of the individual and of nature (the one that brings social harmony, emotional and psychological balance to the wise man), which will influence the society from antiquity until nowadays. There is a clear resemblance between the precepts of the Stoic philosopher and the precepts Christian religion. Consult not only by philosophers, but also by the Fathers of the Christian Church or by many Christian moralists his ideas made him.

**KEY WORDS:** Seneca, morality, state, law, Christianity, psychoanalysis, virtues

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## **Introduction**

Lucius Annaeus Seneca was born in a very pragmatic Roman world, in a senatorial family in Spain, which seems to be destined for a political career and forced to acquire oratory art. Although an adept of Stoic philosophy,

Seneca's writing cannot be framed exclusively in any of the Hellenistic philosophical schools existing to him, because the work of the Roman thinker actually reflects his life experience. In essence, there is a specific approach to the sale of personality, an essential philosophy that brings up issues addressed by the philosophy of predecessors, but does not express itself without prior criticism of any of the solutions proposed by them.

Emphasizing his own life experience, he transforms the ancient Greek stoicism into the concept called today *neo-Stoicism*, starting from the principles of Stoic philosophers, but also contributing to the personal interpretations that gave birth to neo-Stoicism, whose priority is a *moral domain* (Popa, Dogaru, Dănișor G. and Dănișor C. 2010, 76).

First, Seneca can be considered an educator for both contemporaries and later generations, an educator of the human race. Through this appreciation of education, Seneca continues the tradition of Greek philosophy and attaches great importance to education. Even if it starts from the common consciousness of life, it comes with a reassessment of this conception: happy people are, in fact, the unhappy - a vision that changes values makes us consider some desirable, morally moral aspects, when we enter our condition.

Like the Stoic tradition, it shares the idea that the intellect of young people must be educated in order to get rid of the errors of common concepts and to gain possession of the knowledge of good and evil. People have to guide themselves according to the principle of the only good is the moral one; to aspire to possess perfect goodness and not a particular good because he is equally an aspirant to divine greatness. The supreme good of care aspires to man is different from that possessed by gods and the way to good, even if extremely difficult is always possible.

Another essential feature of Seneca's philosophy derives from how the nature of virtue is conceived, because in the center of the Stoic doctrine is the idea that virtue is sufficient for life. This vision of virtue is also found in Socrates and Plato. As to the way Seneca understands the nature of Seneca virtue, it is equally in the tradition of the old Stoics. If we look closely into Seneca's texts, we realize that the sage has plunged into eternity, the wisdom contender uses every opportune moment of his life to gain eternity, and the



vicious loses every appropriate moment of his life. Achieving moral perfection involves going through several states of mind, depending on the degree of capitalization of the right moment (*kairos*).

The great purpose of life is the acquisition of virtue both at the theoretical level and at the practical level, aspect from which the meaning of philosophy emerges, as well as the ideal of the wise, so widespread later (Georgescu 2001, 31). For Seneca, philosophy is both *contemplatio* and *actio*, and this fact finds an echo even in the way Seneca conceives his *parenesis* and educational discourse.

Seneca's concern is the practice of virtue more than the theoretical investigation of its nature: philosophy is not in words, but in deeds and in a case as a repudiation of any theoretical interest. The inner energy liberated by the cultivation of virtue receives, thanks to joy, its true value, the joy that represents the exclusive welfare of the wise. Through the calm that he possesses, he differs from any other intellectual, from any other lover of the arts and sciences. Only the wise man goes beyond anxiety and finds the existential balance.

The concept of education proposed by Seneca implies, besides improving the terrestrial life and overcoming this existence, as well as a happy life of the soul in the company of all the souls of the wise men of the past, after it has separated from human existence. In this way, his philosophical conception is „a true religion”; the political conception - highlights the „gullible political man, eager for power”, but who must possess the peace of mind necessary for the accomplishment of the proposed tasks; and the legal conception - the adept of the principality, sees in the monarchy the „state form according to nature”, a militant of the natural law, the supremacy of the individual on the state, the equality of men and the supreme good that gives birth to the true human virtue (Popa, Dogaru, Dănișor G. and Dănișor C. 2010, 77-81).

### *Motivation of choosing the theme*

From a specialist study, I realized that Seneca philosopher is currently one of the most widely read Latin authors. This finding led me to investigate the importance of his philosophical / political / legal concepts, exposed in

his vast opera, in a conquering language, based on a rhetoric that fascinates contemporary man.

*The actuality of the subject and the importance of the issues addressed*

The actuality and importance of the theme addressed derives precisely from the fundamental aspects of Seneca thought, which interrogates the social, political and legal-contemporary actor in relation to:

- ✦ The ideal form of government of the state - the monarchy or the republic?
- ✦ On the theory of natural law - it takes the natural aspect (divine) or the human one?
- ✦ The role of virtues in human life
- ✦ Moral perceptions found in Christian religion
- ✦ The psychopathological or psychoanalytic aspects present in his works

## 1. State concept - political these

When we relate to Seneca's political discourse, we take into consideration four important moments, illustrated by the following works:

a) *About anger*, which still adheres to the optics of the aristocracy, as an embryo of the doctrine of the monarchy;

b) *About the shortness of life*, where civic disengagement is expected, but Claudius's philosophical conversion is also attempted;

c) *About leniency*, which, after the soul's peace and *Apollocyntosis*, includes a program of government;

d) *Epistles to Lucilius* and other works of late, which translate definitive withdrawal from political life, abandonment of political science, defeat of the political philosopher.

In Seneca's view, political activity is the result of the lessons learned from the ideas of the Stoic school, which do not advise the wise to abstain from this activity, but on the condition that this activity does not disturb the soul's peace of mind. In this way, action is not an end in itself, but only the way through which mediation acquires the peace of mind, this being

the true finality. By addressing this issue in the *Work of tranquility animi* the Spanish thinker identifies three external factors that could divert or divert the individual from action: *uncertain eloquence*, *insufficient wealth* to cope with spending required by political life, and *poor health*. (Seneca 1928-1935, 73)

### **1.1. Universal State and Monarchy - the ideal forms according to nature**

In Seneca's opinion, people are born equal and possess equal rights to cultivate wisdom and virtue as expressions of a natural but also universal right: Human law has no value unless it corresponds to universal or natural law (Cloșcă and Suceavă, 1995, 26).

Seneca sees the monarchy in the form of a state conforming to nature, so that it understands this form as the only way to prevent the destructive action of exaggerated freedoms, though based on the *concept of wisdom* seeks to substantiate the principle of *individual autonomy*. Thus, the pre-eminence of individual autonomy over political activity has the significance of detaching the political man from the political activity that he considers only the individual's choice, the way chosen to achieve the good in society.

### **1.2. The diarchy system - the balance of power between the emperor and the senate**

*Principality and freedom*: official ideology does not rise to the rank of theory, and the official doctrine claims that August restored the republic compromised by civil wars. Senator thinker, actually pleaded for August's diarchic system (the balance of power between the emperor and the Senate), but this diarchy was not a reality. In *De Clementia*, he defines the good Caesar: there must be a prince, but it must act in the interests of the subjects, and not of his. He is the guardian and not the master, the representative of the people endowed with a divine power, but not a god, and he must be before all the servant and interpreter of the law (Könczöl 2008).

*Diarhia* (diarchy) is the system that demands the division of power: for Seneca, however, everything that exists is only through the concession of the Emperor, his personality is the determining factor. The only hope is that he is a wise man who realizes his unlimited powers, yet accept the limits of being the servant of the positive law and the moral law. So Seneca's system was ultimately based on an act of faith (Universul românesc 2011).

Moreover, in *De ira*, Seneca had stated that the „governor of the citadel”, the *rector civitatis* (he uses a wide range of terms to designate the good sovereign), must treat his subjects as a „physician”, the physician of the soul, a philosopher, to direct those who suffer from vices. Thus, the monarch was converted into a philosopher or faithful student of the philosophers (The Latin Library n.d.).

## 2. Concept on right - legal consideration

### 2.1. Natural law

In the same way as Cicero, Seneca is the follower of natural law and conformity with nature: *If you live in harmony with nature, you will never be weakened; if you live according to your beliefs, you will never be rich*. Even if it is a subjective right, it is fundamental and represents the true human law that imposes an intrinsic sanction: *What does not stop the law stops the good will* (Seneca 1984, 28).

It will focus on moral aspects in its philosophy, the right being in accordance with ethics, and the human law in accordance with normal nature:

*Not to follow the fruit of the benevolent, but the good things themselves, looking well after knowing only the evil, which is the property of a beautiful and good miracle. How great would be the act of being useful to many people if there was no one left disappointed* (Seneca 2005, 138).

Seneca exalts and purifies gestures of gratitude and gratitude from the Roman clientele, integrating them into an autonomous and conscious social morality. In this paper, Seneca is in favor of a „treatise” - *social foedus*, which alleviates the moral conflicts and at the same time preserves the established order, adapted, of course, to the edifice of the society of the epoch, calling into question the obligation to help the one in need: *He has advised to stretch forth the hand of the one who is boastful, to show the way of the lost, to divide the bread with the fed* (Seneca, 2005, 153).

### 2.2. Human rights

The human rights concept is found in the form of Roman humanity (*humanitas Romana*), being very well theorized in the treaties of Seneca and Cicero. This

notion is the equivalent of the Greek *philatrophia*, but improved with the traditional Roman values and their well-known pragmatism.

The two Roman thinkers seem to try to steal Greece's glory of philosophy, calling for virtues as *otium* and creating a complementarity between the pragmatic and contemplative aspect of life (Cicero 1998, 10).

Later, Seneca would recommend public activity only to the extent that it does not conflict with the principles of the Stoic doctrine and does not prevent the achievement of the desires of the concept of human rights (Guțu 1999, 229). The concept of human rights, in Seneca's view, is a complex of distinct and severe values that were part of the code of conduct of a Roman citizen and which are virtually impossible to translate into Greek: *pietas* (which is different from *eusebeia*) morals / *mores* (which do not exactly coincide with *ethos*) and *dignitas*, *gravitas*, *integritas*, *clementia*, *aequitas*, *lenitas*, *mansuetudo*, *moderatio*, *indulgence*, *iustitia*, *fides* and so on. Thus, the idea of humanity subsumes all these values, universalizing them (Schadewaldt 1973, 43-62).

As far as the application of human rights is concerned, humanity goes almost to the detriment of the clementy component and does not always have a similar impact on the Roman scene as in the Republican period, although metamorphoses of the concept and progress, on certain levels, are still met (Bauman 2000, 67-86).

**Equality between citizens** becomes a legal equality before civil law and a political equality in front of legislative and executive functions (giving birth to privileges that have influenced both private and public rights). Thus, it can be seen that the analysis of rights cannot be complete unless it starts from the analysis of other concepts, such as freedom, equality or individuality, the analysis of aspects related to the economic, political, social or philosophical environment.

**Freedom.** In Seneca's view, there is no hierarchical scale between virtues, possessing individuals, the same degree, so that all who practice them are equal. At the same time, we could say that they are not just equal but equaled by this participation in moral life (Popa, Dogaru and Dănișor 2010, 81).

Virtues are not mysterious elements, but they are matters that are within reach of any man, that is, they can be easily understood by anyone:

„Virtue is not closed to anyone: it is within reach of all. Everybody receives them; they all call them free or dissolute, slaves, kings, or surgeons. He does not choose his rank or asset. He is content with the equal man” (Seneca 2005, 74). In Seneca’s opinion, *freedom* is an extremely important desideratum, a value that does not bear any material comparison, even when it is balanced with a very precious metal: *Freedom is not sold for all the gold in the world*.

*Equality* is not just in the face of justice, but also in society: any citizen must be able to have similar conditions to launch himself in the face of the great choices of existence. Every citizen has the right to a minimum of existence and the modern materialization of values such as the dignity of the person, equity, safety, solidarity in the period. Equality is manifested in several ways: before the law, the equal treatment of all citizens who find themselves in the same situation, the denial of privileges integrated with morals. However, in this case, the value has also evolved into opportunities. So it does not matter from what environment you are, what a race you are, you have the same possibilities.

### 3. Seneca - precursor of Christianity

One of the important aspects of Seneca’s implications is the likeness of his philosophy, thinking, concepts, etc. with Christian philosophy. There are indeed some analysts who believe that Christian ideology was inspired by the work of the great ancient philosopher, some even asserting that there was a correlation between the apostle Paul and Seneca, declaring that the latter was Christianized, which is not historically confirmed, but creates an interest in literature.

Seneca belonged to the Stoic current, which despised luxury, ambush, life without any high concern, concepts that we find in Christian conduct as well. In his vast opera, many passages resemble Christian religion (Rotaru 2005a, 204-205). Seneca, as well as other ancient philosophers, had many moral precepts, precepts of absolute and immutable good. They believed that good governs the world and that it always overcomes. Seneca was therefore stoic. He placed virtue, the pursuit of philosophy, the fleeing of wealth, the help of others, the gentleness, and the good deeds. The concept of equality in Seneca, similar to that of Christianity, has been proven by the actual sacrificial

act it has shown, as well as by many followers of the Christian religion that have gone to the ultimate sacrifice.

In the table below, we will make a comparative textual analysis between the perceptions of the Stoic doctrine in Seneca's view and the Christian perceptions existing in the Bible, easily observing obvious similarities between the two doctrines (Gheorghe 2008).

Theme	The perceptions of the Bible	Seneca's perceptions
<b>Straightening the sinner</b>	"I do not wish the sinner's death but his right" (Ezekiel 18: 23)	<i>How human will be to show a gentle and parenting soul to the guilty, and not to follow the parables, but to bring them in the right way (Seneca 1981, 24)</i>
<b>Love of the enemy and forgiveness of his sins</b>	"Love your enemies, bless those who curse you, do well to those who hate you, and pray for those who harm you and persecute you. That you may be the sons of your Father in heaven, that He causes the sun to rise upon the wicked and the good, and sends the rains upon the righteous and the unjust." (Matthew 5: 44-45)	<i>It is not in the nature of a wise man to hate the lost; otherwise, he will hate himself. (Seneca 1981, 25)</i>
<b>The source of evil</b>	"What comes out of the mouth comes from the heart, and that defiles the man." (Matthew 15: 18)	<i>Therefore, we must know that the evil we suffer does not come from the places we are in, but on the contrary, from within us. However, realize: maybe all evil comes from your soul. (Seneca 2004, 81, 85)</i>
<b>Your bad friends distort good habits</b>	"Whoever walks with the wise is wise, but whoever accompanies the madman will have trouble." (Proverbs 13:20)	<i>When we choose our friends, let us look for the less afflicted. Evil spreads when the sick mix with healthy people. (Seneca 2004, 89)</i>
<b>About judging others</b>	"Do not judge not to be judged." (Matthew 7: 1)	<i>Some have to learn not to reproach anything (Seneca 2005, 138)</i>
<b>Charity</b>	"Better be merciful from the things in, and then all shall be clean." (Luke 11: 41)	<i>Not to follow the fruits of benevolence, but the benefits themselves, to seek the good after knowing only the evil, that is what is of a great and good heart. How great would be the act of being useful to many people if there was no one left disappointed (Seneca 2005, 139)</i>

<b><i>Let go without the thought of receiving</i></b>	<p>“Whosoever asked, give it.” (Luke 6:30)</p> <p>“And if you lend to those from whom you hope to take back what reward is yours?”</p> <p>“Do well and lend without hope for anything in return. In addition, your reward will be great.” (Luke 6: 34-35)</p>	<p><i>Merit is to do services without the thought of restitution. The noble soul man gathers the fruit of blessing from the act of giving himself. A true man never thinks of restitution unless the debtor announces it. Thus, the service turns into a credit act, and bringing a paid service is a shameful shit!</i> (Seneca 1981, 138, 139)</p> <p><i>We have to teach people to offer, to receive and to return from the heart. Let us give it the way we want to get. First of all in the heart, fast without hesitation. The man who is hesitant is very close to refusal and will not attract any gratitude. Since in the act of blessing the intention of giving has the greatest charm, when hesitation proves lack of will.</i> (Seneca 2005, 47)</p>
<b><i>The kingdom of God and the soul of man</i></b>	<p>“For, behold, the kingdom of God is within us.” (Luke 17:21) “And we have not received the Spirit of the world, but the Spirit that comes from God so that we may know the things God has given us by his grace.” (Corinthians 2: 12)</p>	<p><i>The God is near you, he is with you, and he is within you. Inside us is a divine spirit, watching for both good and evil. In every man, a god dwells.</i> (Seneca – Letter XLI)</p>
<b><i>There is no human right without God</i></b>	<p>“There is no righteous man, not even one.” (Romans 3: 10-12)</p>	<p><i>There is no virtuous man alien to divinity.</i> (Seneca – Letter XLI)</p>
<b><i>Helping those hungry and thirsty</i></b>	<p>“Divide the bread with the hungry, and bring into the house the poor homeless.” (Isaiah 58: 6)</p>	<p><i>We will advise them to stretch forth the hand of the drowning, to show the way of the wanderer, to divide his bread with the hungry.</i> (Seneca – Letter XCV)</p>
<b><i>About Concerns</i></b>	<p>“Do not worry about your life, thinking what you will eat or drink.” (Matthew 6:25)</p>	<p><i>What will be in the future we will see for now, however, no care. However, there is tomorrow. First, if there are unquestionable fears of a future misfortune, for most of the times we fight with imagined assumptions.</i> (Seneca – Letter XIII)</p>



<b>About avoiding tribulations</b>	"And then who among you, even worrying, may add an elbow to his height." (Matthew 6:28)	<i>Let us carry on not as if we should live for the flesh, but as if we could not live without the flesh. From too much love for him, we are tormented by fears, burdened by worries, exposed by reproaches. (Seneca - Letter XIV ) The life of the mad man is unhappy and always mournful, and always driven to tomorrow. (Seneca – Letter XIV)</i>
<b>About the futility of wealth</b>	"See and beware of all kinds of greed, for one's life is not in the abundance of his wealth." (Luke 12: 19)	<i>Get rid of these deceptive goods occasionally, more to whom he likes than whom he has. For if they had any consistency, they would also satisfy you, so only the thirst of those who swallow them. Close to this delusive brightness. (Seneca – Letter XV)</i>
<b>Wealth vs. The Kingdom of Heaven</b>	"Teacher, what good should I do to have eternal life? If you want to come alive, keep the commandments. I have carefully guarded all these commandments, what am I missing. If you want to be perfect, go sell what you have, give it to the poor." (Matthew 19: 19-22)	<i>For much wealth, there was a hindrance to philosophy. (Seneca – Letter XVII)</i>
<b>Good man and evil man</b>	"The good man brings forth good things out of the good treasure of his heart, and the evil man brings out evil things from the evil treasure of his heart." (Luke 6:45) "There is no good tree to make a bad fruit and no evil tree to make good fruit." (Luke 6:43)	<i>The sinner turns all things into evil, even those that look very good. The righteous and unthankful man directs the wickedness of fate softens the hardness and salience of things through the science of bearing them, receives the good days with gratitude and modesty, and the evil ones with steadfastness and courage. (Seneca – Letter XCVIII)</i>
<b>About vices</b>	"The greedy man of fortune troubles his house, but he who hates the bribe will live." (Proverbs 15: 27)	<i>... Soulful souls are greed, cruelty and other rooted vices; therefore, evil, in all its forms: malice, envy, pride. (Seneca – Letter CVI)</i>

Table 1. Parallelism between Christian perceptions and Seneca's perceptions

## Conclusions

- There is a clear resemblance between the precepts of the Stoic philosopher and the precepts Christian religion. Consult not only by philosophers, but also by the Fathers of the Christian Church or by many Christian moralists his ideas made him.

- ✦ Seneca is attracted to faith in Providence, to God, and he hopes in a better „beyond”, for whom the world here is just a place to prepare. In the face of human misery, Seneca glorifies the following virtues: mercy, gentleness, endless love for men. For this reason, Seneca was highly prized by the Fathers of the Christian Church.
- ✦ There are opinions that claim that there is a correspondence between Rome in Rome

Paul and Stoic philosopher Seneca, an apocryphal work. Paul, a man of great culture, could write Seneca's writings. Besides, Tertullian, the Christian writer of the second century, talked about the Roman philosopher not by *Seneca noster*.

We do not know if Seneca knew Pauline epistles. However, some understanding of the Christian stoic is visible. In Lucilius's epistle, Seneca writes to her the following: Do we not actually die when we actually die, and when we die, we are born to the true life; where there is no day-night alternation, because it is constant light?

This could indicate a rapprochement between Seneca and Christianity that made Tertullian, which otherwise was drastic with tradition, not to let Seneca: *ours* (Vlăduțescu 2015).

## 4. Methodical contemplation, psychoanalysis and the psychology of suffering

### 4.1. The art of methodical contemplation and the discourse („parenza”)

**Definition.** PARENEZA s. f. Discourse that glorifies virtue; speech, discourse to unleash feelings, actions; encouragement, exhortation, impulse, excitement, exorcism (<fr. *parénèse*, *parainesis*)

Seneca was a militant for the renewal of mentality and writing, he was not an admirer of the past, but attested to the sense of historical becoming ironing the passers-by. For him, his ancestors were no better than the Romans of his time and the vices are of men, not of the ages. This means that not times and human communities are vicious, but only certain individuals. Seneca is an excellent observer of his contemporaries, subtle, pursuant, particularly acute, which reconstitutes the psychological conditions of a happy life and

the harmonious insertion of man into the universe while at the same time investigating the profound mechanisms of the human psyche.

Starting from his analyzes, certain conquests of modern psychopathology can be anticipated when he observes deep psychic psychics and psychological phobias seemingly inexplicable phobias and anxious psychics, grievance, exaggerated susceptibility, culpability, ingratitude, exhibitionism (Cizek 1979, 7-28).

The Stoic philosopher notes that some people are extravagantly dressed for fear that they would otherwise go unmoved by their peers, which they irritate. Although they are contradicted, they are forced not to ignore them. This issue is an example of social psychology that applies to any generation, the chapter of fashion being one with sound implications in the life of society, so we can undoubtedly say that some observations are confined to the "blame of the age" - *conuicium saeculi*. In other respects, the *parenetic* demonstration is always free, within a desirable structure, at the level of a remarkable representation, and contradictions, sometimes strident, between one idea and another, on the same issue do not disturb Seneca, the opportunity, of the right time — the *eukairia*.

The main character of the stoic philosopher's prose is himself, a man possessed of calm and high moral attitude, but also of the desire to improve the political status of the Empire, of strong ambitions, of the taste of world success and remarkable stylistic performances. At the same time, Seneca practices seemingly disorganized structural patterns of his speech, but is true cultural acts: satire, the epistle centered on spontaneity and improvisation or dialogue. In the context of the Senecan Dialogue, it stems mainly from the cynic-stoic diatribe, where the orator and philosophy teacher severely reprimands the villagers or disciples, and uses the exciting discussion method, even the polemic with an imaginary interlocutor, a fictitious opponent whose interventions are, in short, offering a good opportunity for the long demonstrations pronounced by the philosopher. For example, in the work *About Happy Life* behind the fictitious interlocutor partially dissimulate real opponents of Seneca's life. At the same time, the philosopher speaks and writes for the other, whom, like Plato sometime, strives to convince him gradually, in a proper language impregnated with the process of declamation and rhetoric.

The emphasis is definitely on human behavior and on individual conduct, while satirical attacks against real individuals involve a generalizing value that attributes to the Senecan dialogue a very lax macro-syntax of literary discourse. There is an inner psychological seduction that the philosopher exposes to the human mind and soul, which gives him a high parenetic strategy in the elaboration of authentic scenarios around his ideas based on variations on a given theme, treats it on different successive plans (Trillitsch 1962, 12)

Below is the logical scheme of Senecan discourse:

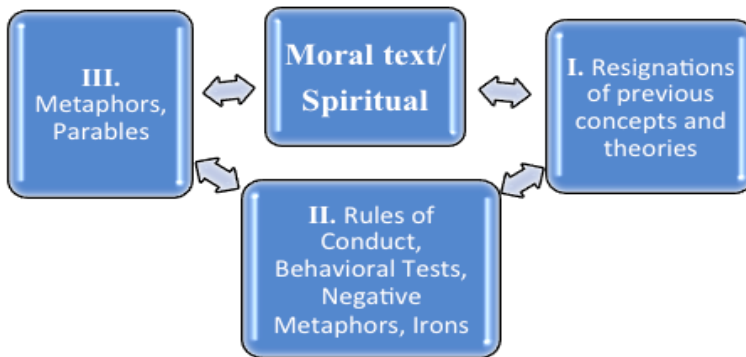


Figure 1. The logical scheme of Seneca discourse

According to the above figure, each dialogue appears elaborated around a spiritual nucleus that assures its unity in the depth structure: a progressive dialectics leads readers to the universal understanding of concepts. The Romanian oratorical techniques on human consciousness (*suasoriae*), illustrating digressions, the many revealing examples, the special fragments of a discourse (*the tirade*) and the rhetorical amplifications are contributed.

#### 4.2. The importance of time in self-examination

Seneca talks about happiness, virtue and the time that many mortals cannot fully appreciate. He reminds us that we alone are the beneficiary of our time and life, which is why we should be careful how we use it.

„Time is the only good thing that really belongs to you. You choose what to do with each moment, with what to measure the Time for your Life. When they keep their fortunes, people are very stingy, however, when it comes to spending their time, the only case in which the avarice is to be praised, becomes wasteful” (Seneca 1967, XVI).

It also reminds us of the importance of knowing our values, according to which we live our life and who give us the impetus to achieve certain things, and if we know our goals, it is essential to live a meaningful life with feelings of fulfillment. Most people did not simply make an insight into their final goals, so they do not even know what could make them happy.

*All people want to live happily when it comes to seeing clearly what makes their life happy, their eyes blur; and, far from easily acquiring a happy life, the more impatient the one who leaps over her, the stronger she takes away, if she somehow strays the road. When the road goes in the opposite direction, the rush itself causes the removal. First, we should decide what this is what we are looking for, and then look at what path we can best turn to it. However, as long as we wander at random, without following a guide, but just the shrieks and cries of all kinds of those who call us in different directions, life will be wasted between stray roads and shortened, no matter how hard we strive, from day and night. Let us therefore determine what we are aiming for and how. (Seneca 1967, XVI)*

In the context of time, the Stoic philosopher addresses the subject of death, a so frequent reason for human fears and the study of the psychological phenomenon that such a complex theme creates. He believes that the subject of death should be a reason to live our life more intensely and wisely than fear of it: *All life must learn to live, and even, even more surprisingly, we must learn to die all our lives ... Whoever chirpines his every day as the last, neither longing for tomorrow nor afraid of it (Seneca 2014, 17)*

The Stoic philosopher also addresses the theme of wealth and the role that it plays in our lives, emphasizing that the wise does not love riches and does not receive them in his soul, but prefers them in and does not reject the wealth he has, but preserves them and wants them to give him a richer material for his virtue. In the wise man's house the wealth plays a slave, and in the wicked, the place of a master (Seneca 2014, 17).

Another important topic in the context of the importance of time and self-examination is the theme of learning, the importance of having a receptive, firm and integral mind when it comes to learning. It is not enough to accumulate many experiences if we do not have the wisdom of turning them into lessons for the future: *A self-assured spirit and calmness rocks through all the nooks of its life. As it does not use anything, no matter how much water you pour into a vessel, if there is no bottom to hold it and hold it, it does not matter how long you have given it. If he does not have a place to fix himself, he goes, piercing through the cracks and holes of the soul* (Seneca 2014, 17).

It is also very important the *theme of human behavior*, which it does not have to agree with most, Seneca details how useless and unproductive the world view is and the adjustment of behavior according to it: *Nothing brings bigger shortcomings than the fact that we take into account what the world says, which is generally approved, and that we live not by judgment, but by the principle of imitation. The result is that people are piling up on each other, climbing. Let us therefore look for what is best to do, and not what is more common, what will bring us a lasting happiness, and not what is found among the vulgar, the worst interpreter of the truth* (Seneca 2014, 17).

Seneca is preoccupied with the time (*cronos*) of human life, realizing the fragile and short aspect of man's time on this earth, so he agrees with Hippocrates when he says: *Vita brevis est, ars longa – Life is short, eternal science* (Seneca 1981, 41).

Another aspect the philosopher is interested in is the waste of time, arguing that *laziness and vices* contribute to this waste of time that you can never recover, and "those who dwell in the pleasures of stomach and love give proving degrading degradation." „The shortest and most disturbing life has those who forget the past, neglect the present, and fear the future." In addition, the retreat in solitude is the aspect of the powerful people, demonstrating that retreat for a time in solitude is preferred any material or material matter in Seneca's conception (Seneca 1981, 41).

#### 4.3. Seneca - a precursor to Freud's psychoanalysis and the psychology of suffering

**Definition. Psychoanalysis** 1. The set of *Freud's conceptions* of conscious and unconscious psychic life, after which the deep tendencies or desires

of the individual conflict with his moral beliefs and are driven into the subconscious, from where they tend to recur in a transvestite form. 2. A method of psychological analysis and treatment of neuropsychiatric diseases, which aims to discover the causes of neuroses and psychoses and to cure these diseases through various tests (word associations, dreams, interpretations of confused figures, etc.). – From fr. *Psychanalyse*.

### A. The Oedipus complex

Tragedy Oedipus king (Old Greek - Οἰδίπους Τύραννος - Oidipous Tyrannos) is a tragedy written by Sophocles and played for the first time around 429 BC. In his turn, Seneca also portrays the drama The Tragedy of Oedipus, with similarities to the work of Sophocles, but also quite important differences between the two works.

**Myth (abstract):** *Oedipus is the son of Laios, the king of the city of Theba, and of Jokastea. An oracle foretold Laios that his own son, who would then marry Yokasta, so that Laios gave Laios a servant instructing him to abandon him as far as possible, would kill him. Some Corinthian shepherds who take him to the court of King Polybus find the Oedipus.*

Polybus becomes father until Oedipus reaches the age of manhood. Then he goes to Delphi to consult the oracle. On the way, in a tiny place, some traveler coming from the opposite side ordered them to leave aside to let them pass. Oedipus refuses and there is a fight in which he kills two people. One of these was Laios, his own father, whom Oedipus did not know. Thus, the prophecy is fulfilled. After the death of Laios, the king of Theba became Creon.

At Theba, Oedipus accepts the Sphinx challenge. He put a question to the Tebanians and how they could not answer killing them. Then King Creon promises the hand of Jacob - and the royal crown - to the one who will escape the Sphinx. Oedipus responded to the following enigma: "Who walks in the morning in four legs, at noon in two, and in the evening in three?" Oedipus guessed that it was a man (who, in his childhood, goes beating, using his hands and feet, at noon, ie he matures on two legs, and in the evening - in old age - he rests in a cane). Thus, Oedipus obtains the promised reward: the throne of the city of Theba, and the hand of Queen Iocasta, whom she does not know to be her own mother.



*From their marriage are born four children: Eteocle, Polynice, Antigona and Ismene. However, the city of Theba is haunted by a terrible plague that no one finds the cure. The subjects die one after another and Oedipus sends Creon to ask the oracle that is the motive of the gods' wrath. The oracle replies that the death of King Laios must be avenged, and Oedipus starts investigating to find the culprit. It turns out to be the killer himself, and terrified of his own deed, as well as the incestuous marriage to Iocasta, is punishable: he takes his eyes alone and sets off as a beggar in a wandering by his daughter Antigona. He is welcomed with hospitality in Attica and dies at Colonus (Cultural BZI 2014).*

The tragic story of Oedipus and his close friends was one of the richest sources of inspiration of Greek poetry and literature of all time, including in the twentieth century – after the appearance of Freud's concept of „Oedipus complex” a leading role in the history of thinking.

## **B. The Psychology of Suffering**

The Spanish philosopher attaches great importance the notion of consolation and self-control, as well as the way a person should be consoling about pain and what principles are used for that purpose: *it is not a great thing to stand strong when everything goes well when life flowing on a good run; it must stand on the contrary to put the soul to the test* (Borch-Jacobsen, 2002).

The wise one urges and advises you with the desire to console you. He is like a psychologist, a very good observer, playing on stage of the theater of life as a spectator. In this sense, all the principles that serve to guide man are born after a fine analysis of life. The way you remember, in a gentle tone, that in affective states, especially when you are in the negative, you have to take into account the role you play in society and in the family before you leave behind feelings and manifestations of any kind. Therefore, you can only be rational in any circumstance of life, either in the face of success or in any kind of loss, in order not to be dominated by the primal instinctual senses. This is how other people can recognize the character of a person.

The consolation method indicated by Seneca to console an important loss in one's life is the question of perspective. The wise man will guide you to forget your own pride and realize that there are many people around you who live a drama like yours and that you should not consider yourself a special



target different from them (Seneca 2004, 28). The real key to helping you successfully overcome an unfortunate situation is to become aware of your own transient human condition, reconciliation with your own death, and the fact that all your existence is leading to an unavoidable end, that time passes quickly, to awaken in you the desire to make the most of life, to enjoy at all times the things that surround you.

In this sense, we should not dwell too much in the „melancholy barrel”, but enjoy life: *carpe diem*; not to be self-indulgent with regard to our conduct even in moments of soul storm, the strength being a virtue belonging only to the characters of the character. Another direction of psychoanalysis appears in the work of the *Consolatio ad Polybium*, where Seneca highlights the importance of accepting our human condition, which implies knowing that time is passing, resulting in the fact that any material inheritance that we would like to leave will be, in the the last, broken: *What eternal thing could the hands of mortals have done? Nothing is everlasting; it takes a long time; everything that begins has an end* (Seneca 2004, 197).

In his conception, this is the cause of pain that has no purpose, because no matter how much I suffer for an unfortunate event, especially the death of a loved one, the weeping, though the poop, will not bring us back, and will only lead to the darkening and shortening of our lives: *we can blame fate, we can not change it*. However, the fact that people are living in a dual world gives them the opportunity to choose what kind of person they can be.

In the paper, *Consolatio ad Marciam*, Seneca presents the experience of two women who have suffered the same suffering, namely the loss of the son, and the opposite way in which each one behaves. The two women lose each son, Livia and Cornelia - one wife and the other sister of Emperor Augustus.

The pain of the two is similar, but their reaction is different: Livia, proving a special and exemplary character, in the opinion of the Stoic philosopher, although it is grieved for a period, it is only as right as it can, detaching from that event and -and continue life. At the other pole is Cornelia, which leaves despair, to a point where it is dedicated to it. This pain, which has become self-imposed, becomes, for the unfortunate soul, a crooked pleasure that affects those around her. The wise man attributes Livia's great appeals to her, and Cornelia can not tell her more because she is the woman who

has pulled out of the living. Following this parable we understand that it is up to us to choose what kind of person we are, even in extreme conditions that disrupt our state of equilibrium.

In *Consolatio ad Polybium*, Seneca puts into question the fact that if you are a known and important person, you will certainly not be able to act like a banal man, or that you will be able to take advantage of the time to comprehend your situation. As a man who has a chosen teaching and has a crossing among intellectuals, by these traits you are more definitely exposed to the critics: *Hard slavery is a great fate* (Seneca 2004, 197).

Being an example to others through your behavior, you are not entitled to show your suffering because you are a pillar of support for the weak, and if you see that you cannot support them then you will fall, and the same thing will happen to the others. When you become a need of others, with glory comes the self-forgetting: *You are not allowed to cry, just to be able to listen too many who are crying* (Seneca 2004, 198).

These tips, based on the principles of Stoic philosophy, are nevertheless stated by an objective person, unaffected by what has happened, which proves that the superiority of the being comes from the self-control of the instincts and primary senses, but especially of reason: *Reason to end tears*. In addition, this wisdom means the ability to enjoy the good parts that remain to you, or as you might say, to see the full part of the cup: *Let us rejoice what is given to us and give it back when it is ours asked for* (Seneca 2004, 199).

Another constructive habit is to forget about suffering through the concern of mind and spirit with activities that require a greater degree of concentration. In this way, do not feel bad anymore: *Turn your face from the ones that torture you to the others that comfort you* (Seneca 2004, 200).

In conclusion, Seneca is a precursor to Freud's psychoanalysis through the Oedipus complex, even if it is only in an incipient form, not in the concrete and detailed form, as the German philosopher puts it.

Consolations are also important in Seneca's vision, and in these two consolations, *Consolatio ad Marciam* and *Consolatio ad Polybium*, the Roman philosopher, suggest that the stoic principles presented above represent his objective vision, while at the same time aiming to relieve the senses and their

pursuit is not only the way to a happier life, but also to a higher ideal, worthy of a superior being, like a man endowed with reason.

## Conclusions

At the end of this paper, we can say that Seneca is a complex thinker that leans towards a Stoic philosophical system, but it also requires many personal directions. As a philosophical thought, he places great emphasis on *practical virtues and morals*, on the phenomenon of knowledge of *human nature* and on the individual, on the discovery of *true reason* and on a *moral and political order* (Grimal 1992, 10).

*Regarding the antithetical relationship between the state and the individual*, the concept of good supreme highlights the virtue whose perfection determines the lack of any value changes of it and consequently there cannot be a hierarchical scale of virtues, there is a permanent equality of self, from which the equality of those who participate in it resides. In this way, individuals are equal (or equaled) by participating in moral life: „virtue is not closed to anyone: it is within reach of all. He does not choose his rank or asset. He is content with the equal man” (Seneca 1935).

Seneca's allegations sensed the break-up of the balance between the state and the individual, the antithetic relationship between the two concepts getting a favorable solution to the latter, even if the state sometimes seeks to establish or impose the preservation of a lost preeminence.

*The idea of a universal state and monarchy as a form of absolute and nature-conscious government* is the apogee of political thinking and the state of philosopher's conception. Monarchy can degenerate into *tyranny*, as happened in the case of the kings of Rome, aristocracy can generate power by groups and circles of selfish interests and turn into *oligarchy*, and democracy can lead to disorder, to *corruption*, to the lack of precise rules, *demagogy* (Dănișor 2011, 40).

We noticed Seneca's legal thinking, from which we could form an idea of the conception of his law. The main aspect from which I started was Seneca's vision of *natural law*; it governs universal laws, being the foundation of morality and justice in its opinion. In this way, according to natural law,

we can say that the main source of law is not the law, but *nature*, so many of the rights conferred on men have been known as natural rights (Murzea 2003, 20). From this natural right derives all the fundamental rights that man can possess, while it is important to consider the essential legal issues that Seneca emphasizes: *freedom and equality / equity*.

It also focuses mainly on the aspect of human dignity, loyalty, and leniency - *the more power you have, the less you need to abuse it* - the lack of anger in the lives of the leaders of society, the prudence and moderation for a balanced and well-balanced life, as well as that of *blessings*, clear signs of an advanced *concept of morality* and practice of human virtues, based on the fact that virtue is based on it.

The practical side of Seneca's stoic philosophy is what gives him independence. Putting the perceptions above the principles, the practical part of morality above the theoretical, the Senecan project of reforming man fully responded to the Roman need of a applied and applicable philosophy (Sârbu 2003, 200).

We realize the complexity of the Roman philosopher's thinking as well as the depth of his concepts of state and law. A political and philosophical man, a talented trainee and a literary scholar, gave rise to divergent opinions, ranging from uncensored admiration to categorical blame; the subject of these controls represents its contradictory contradiction, the striking difference between the thinker, the mistress, the counselor the politician and the politician, the imperial officer, and the pragmatic: *it was Seneca*.

At the same time, Seneca also manifested itself as a witness to his own weaknesses, as he reveals the dialogue about Happy Life. Weaknesses only partially justified by reflections on the *eukairia*. Particularly relevant is Tacit's judgment, which, with a slight irony, presented him as an elegant and accurate witness of the Neronian age: „that man had a charming talent and the literary ear of his time.”

The practical side of Seneca's stoic philosophy is what gives him independence. Putting the perceptions above the principles, the practical part of morality above the theoretical, the Senecan project of reforming man fully responded to the Roman need of a applied and applicable philosophy. His philosophical concept places great emphasis on the idea of the Supreme

Good, on the practical virtues and morals, on the phenomenon of the knowledge of human nature and the individual, on the discovery of the true reason and on a moral and political order.

In addition, his works are true works of practical morality in which he expresses explicitly against the autonomous cultivation of the arts of language, since antiquity, he was perceived, generally, to be primarily a great orator. Epistles to Lucilius are among the most well-known philosophical and educational works of all time. Seneca is a well-known classical Greek antique who tries to come up with a vision in which classical *paideia* is played in the spirit of the age and environment in which he lived.

Seneca decides against dialectics as it was studied in ancient philosophical schools, but it is not against the dialectics itself, but only against the way, other philosophers conceive it. He uses dialectical notions to the extent that they can be educationally-morally useful. Seneca thinks a man's word is like his way of being. When the expression of an age is a fallen one, it is a decay of the morals of that age.

Seneca is the creator of a philosophical system specific to the Roman world, being introduced into the same philosophical school as Epictet and Marcus Aurelius. The proposed philosophy is, at the same time, the product of the Roman world and is born from the effort to create a vision of the world that makes life possible in the existing social and political context. Seneca has come to be considered a model to be followed by posterity, even the Christian one (Otovescu 2010, 230).

Seneca Morality has been diligently studied throughout the Middle Ages, revealing a moral language that has divergent points with the writing of some authors such as Erasmus in Rotterdam, Shakespeare, Voltaire, or Kant. In the case of these authors, there is clear evidence that they studied Seneca and capitalized on his inheritance. Erasmus wrote the madness of madness in the style of Seneca's writings; Voltaire was inspired by him to conceive *His Cognition*, and the Shakespearean drama is tributary to Seneca's tragedies. Kant, considered some scholars, drew inspiration from Seneca to distinguish between the maxims of private action and general law.

In Seneca's conception of state, what matters is the aspect of the social actor (the common individual) in relation to the state, the idea of universal state, and the monarchy as a form of ideal government.

Regarding the state-individual parallelism, the emphasis is on the rights of the individual who participates in the social life, with the same intrinsic value, in the ratio of equality through participation in moral life. The philosopher introduces the break-up of the balance between the state and the individual, the antithetical relationship between the two concepts obtaining a favorable solution to the latter, even if the state sometimes seeks to establish or impose the preservation of a lost preeminence. The idea of a universal state and monarchy as a form of absolute and nature-conscious government is the apogee of political thinking and the state of philosopher's conception. Another important aspect is the aspect of education that defines the power of a state:

- ✦ For Seneca, education involves the cultivation of virtue;
- ✦ It gives the two aspects of education, both theoretical and practical, equal importance;
- ✦ The theory and practice of virtue are correlated to doctrine of the likeness of divinity (*homoiosis*);
- ✦ The possibility of transforming man into a good or bad deity, depending on the success or failure of the educational process he is going through.

On the other hand, Seneca's legal thinking — from which we could draw a conclusion on his conception of law — takes the forefront of natural law, the one governing universal laws, being the foundation of morality and justice in his opinion. Under natural law, we can say that the main source of justice is not the law, but nature, so many of the rights conferred on people have been known as natural rights.

From this natural right derives all the fundamental rights that man can possess, while it is important to consider the essential legal issues that Seneca emphasizes: freedom and equality / equity.

The equality to which the Roman philosopher relates is not like the equality of the ancient conceptions or the many philosophical concepts that have followed throughout history, not even the one of equality in communism

— valid only to bureaucracy, the paranoia of power transforming anyone into a dictator, having the function: the function creates the value — but an equality derived from nature, from the natural law, having the syntax: the value creates the function.

The key to the virtues and qualities that the monarch or magistrate must possess is dignity, loyalty, clemency — the more power you have, the less you need to abuse it, the lack of anger and aggression, prudence and moderation for a balanced and well-balanced life, as well as benevolence, clear signs of an advanced concept of morality and practice of human virtues, the basis of all of which being measure and balance (Lascu 2005, 22).

There is a clear resemblance between the precepts of the Stoic philosopher and the precepts Christian religion. His ideas made him be consulted not only by philosophers, but by the Fathers of the Christian Church or by many Christian moralists (Rotaru 2005b, 297-316).

Seneca is drawn to faith in Providence and hopes for a better “beyond”, for whom the world here is just a place to prepare. In the face of human misery, it honors virtues such as mercy, gentleness, endless love for people, being cherished by the Fathers of the Christian Church, Tertullian (Christian writer of the second century), not by Seneca noster.

In Seneca's view, the aspect of time passage and human self-examination is extremely important, emphasizing fundamental themes such as the theme of death, the theme of waste of time, the theme of happiness, etc., so that man has to count his years of life well live with meaning and responsibility, overcoming common obstacles: laziness and vice.

Also, as I have shown in the paper, Seneca is a precursor to Freud's psychoanalysis, as well as a true observer of the psychology of human suffering and consoling, which suggests that the stoic principles presented represent his objective vision, to relieve the primary senses, and their pursuit not only represents the way to a happier life, but also to a higher ideal, worthy of a superior being, such as the man endowed with reason.

As a personal remark, I believe that, in order to name the Stoic philosophical specificity, as well as Seneca's state and law conception, it is appropriate to use the Romantic expression (Roman adoration of non-Roman divinities).



Because of this research, I believe that the great philosopher Seneca represents a brilliant thinker of antiquity, with a capacity for philosophical, political and juridical analysis, out of the ordinary, in which state, political or juridical views, although complex in nature, are very well structured and elaborate.

Conclude this work with a deep-grained thought of the Roman philosopher, in which all his conception of society, justice, and human virtue can be understood:

„To be righteous without thinking of any reward.”

LUCIUS ANNAEUS SENECA

## References

- Bauman, Richard A. 2000. *Human Rights in Ancient Rome supra nota 13*, London: Routledge
- Borch-Jacobsen, Mikkel. 2002. *Folies à Plusieurs De l'hystérie à la dépression*. [https://www.scienceshumaines.com/folies-a-plusieurs-de-l-hysterie-a-la-depression\\_fr\\_2852.html](https://www.scienceshumaines.com/folies-a-plusieurs-de-l-hysterie-a-la-depression_fr_2852.html).
- Cicero, Marcus Tullius. 1998. "On Divination." Translation by Gabriela Haja și Mihaela Paraschiv, *Introductory study and notes* by Mihaela Paraschiv. Iasi: Polirom Publishing House.
- Cizek, Eugen, Paula Bălașa, Anca Filipescu, Aurel Lupu, Mircea Nicolae Năstase, Slusanschi Radu Săndulescu and Dan Paula Bălașa. 1979. *Collection of Roman civilization studies*. Bucharest: University of Bucharest.
- Cloșcă, I. and Suceavă I. 1995. *Treaty of Human Rights*. Bucharest: Europa Nova Publishing House.
- Cultural BZI. 2014. *The legend of Oedipus*. <https://cultural.bzi.ro/legenda-lui-oedip-9500>.
- Dănișor, Gheorghe. 2011. *Philosophy of Human Rights*. Bucharest: The Universe Juridic.
- Georgescu, Ștefan, 2001. *Philosophy of Law. A History of Ideas in the Past 2500 Years*. Bucharest: All Beck Publishing House.
- Gheorghe, G. 2008. *Conflict between Paganism and Christianity. The Mondoro Publishing House*. <https://bucatidincarti.wordpress.com/2008/05/26/seneca-si-doctrina-crestina>.



- Grimal, Pierre. 1992. *Seneca or Empire Consciousness*. Bucharest: Univers Publishing House.
- Guțu, V. 1999. *Lucius Annaeus Seneca. Life, time and moral work*. Bucharest: Scientific Publishing House.
- Könczöl, Miklós. 2008. „Clemency and justice in the *De clementia* of Seneca.” <http://ias.jak.ppke.hu/hir/ias/20084sz/06.pdf>.
- Lascu, Ioan. 2005. *Separation of culture*. Craiova: Ramuri Publishing House.
- Murzea, Cristinel. 2003. *Roman Law*, Bucharest: All Beck Publishing House.
- Otovescu, Dumitru. 2010. *The sociology of culture*. Craiova: Beladi Publishing House.
- Popa, Nicolae, Dogaru Ion, Dănișor Gheorghe and Dănișor Dan Claudiu. 2010. *Philosophy of Law. Great Currents*. Bucharest: C. H. Beck Publishing House.
- Rotaru, Ioan-Gheorghe. 2005a. *History of philosophy, from the beginning to the Renaissance*. Cluj-Napoca: The University Press in Cluj.
- Rotaru, Ioan-Gheorghe. 2005b. *Anthropological Aspects in Patristic Thought and First Christian Centuries*. Cluj-Napoca: The University Press in Cluj.
- Sârbu, Tănase. *Ethics*. 2003. "Values and moral virtues." Iași: Technical University „Gh. Asachi”.
- Schadewaldt, W. 1973. "Humanitas Romana", in *Aufstieg und Niedergang der römischen Welt* 1.
- Seneca, L. A. 1928-1935. *Moral Essays I, Translated by John W. Basore, The Loeb Classical Library*. London: W. Heinemann.
- Seneca, L. A. 1935. *De beneficiis*, 18, *Moral Essays: volume III*. London and New York: Heinemann, <http://www.perseus.tufts.edu/>
- Seneca, L. A. *Ep. 106, 1*. [https://en.wikisource.org/wiki/Moral\\_letters\\_to\\_Lucilius/Letter\\_106](https://en.wikisource.org/wiki/Moral_letters_to_Lucilius/Letter_106)
- Seneca, L. A. 1981. *Selected philosophical writings*. Bucharest: Minerva Publishing House.
- Seneca. 1984. *Tragedii Seneca vol. 2: Hercule scos din minți; Troienele; Hercule pe muntele Oeta; Fenicienele*. Bucharest: Univers Publishing House.
- Seneca, L. A. 2004. *Dialogues II*. Iasi: Polirom Publishing House.
- Seneca. 2005. *On benefits. On indulgence*. Iasi: Polirom Publishing House.
- Seneca, L.A. 2014. *I do not have another time*. Bucharest: Seneca Lucius Annaeus Publishing House. The Latin Library, n. d. *L. ANNAEI SENECAE AD NOVATVM DE IRA LIBER I*. <http://www.thelatinlibrary.com/sen/sen.ira1.shtml>.

Trillitsch, Winfried. 1962. *Senecas Beweissführung*. Berlin.

Universul românesc. 2011. *Roman Political Thought - History of Political Ideas*, <http://www.universulromanesc.com>.

Vlăduțescu, Gheorghe. 2015. "The event that separated the epochs." In *Ziarul Lumina*, <http://ziarullumina.ro/evenimentul-care-a-despartit-epocile-101010.html>.

## **The Influence of Globalization on Fragemegration\* of Culture**

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**ABSTRACT:** Given that each generation brings new elements and values different from those before it, the style and forms of life are constantly changing and the known traditional models have come to be considered obsolete. In such a society, man has to face an avalanche of information, habits, beliefs, and even religions. Cultures, characteristic of peoples or geographical areas, have become increasingly intertwined, coexisting in the same society, and exerting a particular pressure on the formation of the individual. The phenomenon of globalization has come to have a growing influence on culture. On the one hand, one can see a tendency of fragemegration of culture, and on the other hand an attempt to integrate culture into a wider space. This integration does not involve a cultural leveling. This article emphasizes both the influence of globalization on the fragemegration of culture and the need to change the understanding of culture in relation to previous generations. A proper understanding of globalization and culture gives the world the opportunity to get out of the deepest crisis they are in.

**KEY WORDS:** globalization, culture, influence, faith, society

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Over time, the concept of globalization has been attributed to both negative and positive connotations. Negative connotations are usually linked to the idea of losing cultural identity, while positive connotations refer to the possibility of cultural closeness between people, communities and societies.

\* Concept resulting from the union of “fragmentary” and “integration” terms.

Globalization refers to the fact that most cultures are subject to factors of common influences, common processes, or similar social, political, and economic issues. Even if globalization facilitates more rapid dissemination of information, beliefs, values, customs, helping cultures to be better known and understood, this is not always good, Pahlavi said. From Pierre Cyril Pahlavi's (2003) perspective: "Globalization creates a world where it is increasingly difficult to be protected by external cultural influences."

On the other hand, the definition of the culture concept has oscillated between different reference poles. While some researchers want to integrate culture into the objective or subjective elements of the way to live, for other researchers, culture is particularly integrated into the sphere of consciousness.

When it comes to culture, in essence, it can be said that it is reflected in the social organization and the development of a society. Culture is not something that belongs or can only be found within a social class or communities. Culture is not just a privilege for some, but can be found everywhere.

Every community, society, civilization has had and has a more or less developed, but unique culture. According to Tylor: "Culture, considered in its broad ethnographic sense, is a whole complex that includes knowledge, faith, art, morality, law, custom, and all the other skills and habits acquired by man as a member of society" (Tylor apud G. Ferreol 1998, 49).

For R. Benedict, M. Mead, R. Linton, or A. Kardnier: "A culture is not determined by objective elements, but by the attitude towards life and the affective behavior of its members" (Ferreol 1998, 50). Melville Herskovits defined culture as "the footprint man puts on the environment".

The influence of globalization on the fragmentation of culture can be seen in the increasingly insistent emphasis of cultural relativism. From this perspective, a culture has no absolute criterion to decide that the activities of another culture are "inferior" or "noble". Cultural relativism supports the elimination of prejudice when addressing certain communities or societies different from one's own. According to McGrew's definition:

Globalization is an intensification of global interconnection, a spread of all beliefs, values, goods, beyond the territorial boundaries all spread effortlessly. Globalization leads to a compression of the notion of space and time;

distances narrow, the world becomes smaller, and this is made possible the audio-video means. But even if there is a certain proximity of cultures given by this technological development, cultures are still separated from their cultural specifics. Unfortunately, globalization tends to suppress this by making these cultures take on the character of consumption, making every place look more or less like the other. (Tomlinson A. M. 2002, 10)

The notion of global implies the world as a unique place, the forms of culture becoming more and more in contact. Taking all these things into account, one can say that the cultural dimension of a society is difficult to demarcate, but it has some features:

- ✦ Culture can be understood as the sphere of existence where people build the meaning of practices with the help of symbols.
- ✦ Culture can be understood as the territory of meaningful connotations from an existential point of view, the purpose of culture being to give meaning to life.

Culture, therefore harnesses human existence. Individual cultural actions define the very culture they belong to, resulting in global consequences. Through globalization, culture is of particular importance, whether it be political, environmental, or economic. However, globalization does not have the role of homogenization, but leads to differentiation of global space by developing the consciousness of the variety, with the possibility of choosing among several possible variants. This is facilitated by the fact that globalization annihilates the distance between cultures. On the other hand:

The values, the attitudes, the cultural processes become more uniform, the cultures become more conscious and more protective of their own identity. Strong, dominant cultures that have a larger spreading area promote integration, while smaller cultures, whose proliferation is limited, promote fragmegration in order to preserve their own identity. This can be constituted as a means of defending smaller or weaker cultures against the domination of large cultures. Thus, the latter is more reluctant to assimilate external values, while being more protective of their own values (Intercultural Communication, Distance Learning Course, 2014).

In his book, simply titled *Globalization*, Malcolm Waters defines this phenomenon as “a concept that refers to compressing the world and enhancing its perception as a whole” (Waters 1995, 48). Richard Tiplady added, saying:

Globalization at its basic level means at least two things. First, it represents the dynamic expansion of a local phenomenon in the rest of the world. This phenomenon can be a product (e.g. Coca-Cola), an idea (e.g. human rights) or a social interaction system (e.g. the banking system). Secondly, globalization means the global influence exerted on a local phenomenon, such as the pertinent insertion of English ideological expressions into the day-to-day life of English-speaking societies, because of the computer revolution. (Tiplady 2003, 230)

Extending the assertions contained in these definitions to the spiritual space of modern society, one can say that each individual is confronted at the level of spiritual convictions with a conformation or acceptance of a mixed system of beliefs, forms of worship, and even a plurality of deities, he from all corners of the earth. In such a society the question arises, especially for the authentic Christian, what are the things that can change and what are the values to which he is not allowed to give up.

A factor of influence in the evolution of globalization is represented by the media. This is considered to be a mediator between globalization and the cultures in which it manifests itself. Media development is part of the development of the so-called “culture industry” (Fourie 2007). This may also turn into a stress factor. Taking into account the pressure exerted on the individual to always be aware of current global information - which, according to Giddens, has become a survival tool in today’s society - is overwhelmed, saturated by the media.

The media has come to shape people’s consciences, attitudes and lifestyles, which is why those who do not have the same access to information tend to feel excluded, isolated, and to some extent threatened. This addiction to information is called by Giddens (2000): “the main existential dilemma of globalization.”

Colin Sparks (2007) has highlighted that the most important advantage of the interdependence between globalization and the media is that not only cultural values and customs become globally known but also

issues or needs. In other words, due to globalization and the media, the global community can provide its resources and support in case of need or to help improve certain systems, due to the high visibility and rapid circulation of information.

One thing that can be noticed in connection with the media is the growing space that advertising takes. In this regard, Francois Brune stressed that:

Advertising is an industry that creates the possibility of tight control over individuals through the forms of depersonalization exposing our commercials, an industry capable of satisfying induced needs. Advertising gives man a good self-image, man begins to identify with prestigious models with real people. At the same time, advertising gets to distort the purpose of communication, exploiting rhetorical and stylistic, visual and linguistic processes, which leads to the disappearance of the correct reflection of reality in the advertising message. [...] Advertising leads the individual to believe that everything related to his / her socio-cultural life can be satisfied through consumption. The aspirations of the individual are thus reduced to things and closed in things. We live in a consumer society where man is constantly frustrated for the desire to buy to be relaunched. This is done through advertising and what we consider to be a valuation of products is only a devaluation of values. [...] Advertising does not inform about a product, but it praises it. Advertising is not a free show; it costs consumers. (Brune 2005, 15, 147)

Unlike Francois Brune, Bernard Cathelat (2005) considers that "Advertising is, besides a source of artistic creation, a mechanism that creates new values and lifestyles, but also a school for adaptation to the crisis, a social phenomenon. For many, advertising has become the solution to the significant problems we face. Advertising is a form of culturalising society by inducing values, norms, life patterns, etc."

In conclusion, one can say that advertising is accused of leading to the destruction of the individual by encouraging excessive consumption and by creating false indicators. Advertising thus becomes a way of escaping from everyday reality, detaching from everyday problems, becoming an ideal created artificial world. In such a context, it is particularly important to pay

attention to culture, given that culture cannot be conceived outside the social or human culture.

In this context of globalization, sociologist Dimitrie Gusti (1965, 252-260) distinguished three concepts of culture:

- ♦ **Objective culture** - which is a system of cultural goods that formed the style of an era.
- ♦ **Institutional culture** - including the State, Church, customs, economic organizations.
- ♦ **Personal culture** - where the individual is included in the sphere of values.

Culture is determined by the very existential status of man. Bruno Cescon highlights other types of culture of which it is important to take into account, namely:

- ♦ **Culture of proximity** (or proximate universe), of people and events, both spatially and temporally: the so-called “delocalization” and “detemporalization”.
- ♦ **Culture of contact and non-confrontation with others.** The communications network, overcoming geographical distances, makes it easier to interact with people and their stories.
- ♦ **The culture of contemporary events.** Relational temporal distance reduces everything to the present, to “now” and “here”, diluting tradition and memory.
- ♦ **Equal identity culture.** This disguises the danger of a homogenization of all, losing not only its own difference, but also that of another.
- ♦ **Culture of transparency and opinion.** Loss of distance confronts cultures, makes them known, makes them transparent to each other, but deprives them of their truth, reducing them to a simple opinion, referring to them.
- ♦ **Culture of complaisance and disinterest.** The risk is to make the search for the truth a very slow and passive objective.
- ♦ **Culture of absent participation from outside.** It’s about a performative representation, in which language is action. There is a risk of missing the meeting with the fellow.
- ♦ **Encyclopedia culture** (the new style of knowledge). The illusion of easy knowledge, without discernment, could arise under the pretext of encyclopedic knowledge. (Cescon 2003, 74-76)



Globalization is not, therefore, a goal in itself, but a means in the service of man, of culture, for which it must be accompanied by different forms of control. "There are values that are rooted in human nature, which does not make a difference of ethnicity, wealth, geographic area, I dare to say of religion. They are values of man as such, values that must learn to dialogue, living together in the global audience, without flattening themselves into a homogenization that expels differences, traditions, languages and religions" (Cescon 2003, 79-80).

The last half century brought an interesting phenomenon on the stage of history. First, it has been outlined in the United States as Edward Glenny and William Smallman point out: "Fifty years ago in the United States, most of the Churches were monocultures and pursued their activity without striking different masses of people in their sphere of action [ ...] In an urban community there may be today twenty to thirty cultural or racial groups" (Edward W. Glenny & William H. Smallman 2000, 393). This phenomenon, then spread to other parts of the world, including over the last twenty years, especially the European space.

"Globalization can therefore become an extraordinary opportunity for man if he is enlightened by those human dimensions present in cultures and in faith, allowing the return to essence, the return to the questions that humanity has always sought to answer, and achieve in the world, in a more authentic way, his own pilgrimage, his own "time and space traveling being" even in a world with a time and an accelerated space" (Cescon 2003, 81). Surely globalization has not only negative parts, it does not mean a unique way from a superior culture to everything else. Globalization reflects the interaction between different cultures and has its positive contribution to humanity.

Each culture, therefore corresponds to a certain way of being and acting, which outlines a distinct civilization. Speaking about the relationship between culture and civilization, Ricoeur states, "There are two ways in which mankind can pass through time: civilization develops a certain sense of time, which is based on accumulation and progress, while the way a people develop their culture is based on a law of fidelity and creation: a culture dies as soon as it is not renewed and recreated" (Ricoeur 1955, 286).

A civilization cannot therefore be properly understood unless it's integrated into culture. It is the pragmatic component of culture and serves to service it and not to subordinate it. Each culture crystallizes by determining the conditions in which it has formed and consolidated thanks to the contribution of several factors that determine the culmination of the culture. As Tudor Vianu notes:

There is a natural link between the conditions and goals of the culture. By belonging to different national communities, people live in very diverse environments that require reason and shape their sensitivity. In correlation with the variety of living conditions and their own sensitivity, they project a diversity of goals that are constituted by cultural specificities of each community. In any age or stage of its evolution, culture maintains respect for certain values, specific to the time and aspirations of each society. Therefore, even if we admit a unitary and progressive evolution of human culture, the cultural ideal, before it is generally valid for all humanity, is the same for certain societies and certain epochs. (Vianu 1979, 292-293)

Consequently, Marin Aiftinca (2003, 212) remarks: "There is a complex of spatial, temporal, environmental, spiritual and axiological factors that give specificity to each national culture. That is why, first of all, we speak of a national cultural identity and, only afterwards, by the extensive derivation of a regional cultural identity or, by compression, individual and group. On these grounds the specificity and the difference, which explains the diversity of cultures in history, appeared on the ontological substratum common to all of them. This substrate ensures the unity of culture, which is not jeopardized by their dynamic variety."

Cultures give identity and value to individuals and human communities. Each culture has an open character, which makes it capable of receiving or rejecting the influences from outside and at the same time giving something worthy of attention. In essence: "Every culture exists and preserves vigor and identity as long as it is constantly recreated, in line with the claims of modernity. This recreation is the basis of any real dialogue, and the dialogue carried out according to its rules has the virtue of giving the opportunity to affirm cultural identity, guaranteeing by diversity the evolution of universal culture and undoubtedly the improvement of the human condition" (Aiftincă 2003, 215).

We live in a time when most of our social life is driven by global processes where national cultures, economies and borders have begun to disappear. At the heart of this perception lies the idea of a rapid and recent process of economic globalization (Hirst & Thompson 2002, 11).

Globalization is now seen as a “multi-dimensional” phenomenon - a description that involves serious difficulties for any analysis (Tomlinson J. 2002, 25), on the one hand, or as a “one-dimensional” manifestation, on the other (Hirst & Thompson 2002, 16).

For some, “globalization” is something that needs to be accomplished if we want to be happy; for others, the source of our unhappiness lies precisely in “globalization”. (Bauman, [f.a.], p. 5) Dumitru Popescu (2001, 86) underlined the fact that: “The globalization that is being spoken today is devoid of its spiritual and vertical dimension and remains a simple horizontal phenomenon with purely economic content.”

“The phenomenon of globalization is a fact with which present and future generations will have to live together. It presents itself as a permanent and dynamic process, self-sustaining and very unsighted” (Tia 2003, 349). The world of the future seems to be a fragmented world in several conflicting cultural blocks, according to the model of civilization cravings predicted by S. Huntington (Ică 2002, 481). “We have come to live in a world where there is” wealth without nation “and” nations without wealth” (Tia 2003, 359).

Faced with the new phenomenon of globalization, which for some is an illusion, and for others it is necessary, the Church will have to establish its doctrinal positions in a clearer and more concise way about what globalization is, or wants to look like, through the conditions imposed and by its effects. [...] The Church can not be indifferent to the geopolitics of chaos, the effects of globalism at human level, the way of the anticultural and antireligious thinking of the individual who remained isolated in front of the gate of the new millennium (Himcinschi 2003, 395-396).

This position of the Church is all the more necessary, from the point of view of Adrian Lemeni:

Globalization based on ideological multiculturalism and economic ultraliberalism produces a true mutation at the human level, producing and endlessly reproducing the type of consumer. It is a way of being, which

substitutes the true human identity by refusing the existential depth with a deceiving existence centered on the convenience and mediocrity of a consuming life. [...] Values of education and culture rooted in a paradigm of tradition are replaced by pseudo-ideals produced by a society marked by the idolatry of material prosperity that refuses any appeal to transcendence. Conquered by the market, doped by television, sports or the Internet, the world of globalization is experiencing, at the same time, a global crisis of life, a global educational and cultural disaster, a worrying but sure symptom of the barbarism of the society of the future. Traditional culture of societies disappears or transforms into spectacle and commodity instead of formative transmission, scientific culture is ultraspecialized and all places the place of absolute mediocrity of mass and consumer culture conveyed by contemporary electronic environments, the most profitable industries of the global economy. Globalization risks becoming the agent by the end of history and the overthrow of human civilization through the creation of the last man: the world man, homo economicus the atomized atom, who lives only for production and consumption empty of culture, politics, sense, conscience, religion and any transcendence. (Lemeni 2003, 443-444)

At the same time, Lemeni (2003, 445) remarked: "Globalization seeks only an artificial unification made externally, being in this sense an expression of the mutilating pride of a fallen sinful world. The Church of Christ, instead, follows the unity of the whole world and the transformation of all creation, but from the inward unification of man. A sum of divided people can not form a united world." On the other hand, Georgios Mantzaridis (2002, 6) stressed that: "Globalization promoted by the new world order is only a deceptive to universality. While it seems to unite people outwardly or favor their mutual reconciliation, it eliminates the barriers between them and facilitates communication, in reality it leads to the transformation of the peoples into masses of individuals, the leveling of cultures, the intermingling of religions, to homogenize the appearance and behavior of people, to Americanizing their way of life. The culmination of this negative process is the annihilation of man as a person and even of the very truth about himself."

After all, the declared purpose of globalization is to simplify life and to increase freedom by applying a single system. However, Clement (1997, 134) remarks: "Little by little, the different areas of existence - political,

social, cultural — are emancipated in such a way that the “religious” becomes a simple compartment of the latter. There is no “dominant” authority and ideologies, but only independent authorities, each in its own field. [...] Thus, a multicultural, heterogeneous culture, not at all, a critical culture of its essence, never secure on its own bases, was formed.”

Taking into account all these things, it can be said that the globalized world in which we have come to live is a more and more dull, uniform and non-human world. For many adherents of globalization, culture has become ambiguous and subject to many interpretations. Homogeneity and cultural exclusivity are becoming less and less achievable.

By compressing several cultures from different parts of the world in the same space, a very serious challenge ensued, especially for the Church, to remain faithful to the pure message of Scripture, and to carry forward the ministry of the gospel of Christ. Some Christian leaders have seen this phenomenon as an extraordinary opportunity for the mission, others have been very tangled and clumsy in their approach, especially as they have seen a change of Christian values and concepts in their society with the principles of life outside of Christianity.

Due to the phenomenon of globalization, the own space of any country has become the scene they play, people impregnated by different cultures, with different beliefs, beliefs and practices. This puts the Church in front of a great opportunity. If for a long time, the desire to make a mission among ethnic groups implies a vast geographical area and not always accessible, today, due to the global population movement, it can be a global mission at the local level.

The great challenge for the Church is doubled. First, the Church is called to remain faithful to the teaching of Scripture, without compromising by forgoing the requirements of God’s commandments. This is all the more challenging as globalization can put enormous pressure on uniformity or accepting different ways of religious expression, by virtue of mutual respect (Rotaru 2013, 49-75). This is harmful and leads to the desacralization of sacred life, to the abandonment of the Christian living standard that God required of His children (Rotaru 2014, 532-541).

On the other hand, the Church is challenged to dare to cross cultural barriers. The mission is possible only when the message of the Gospel reaches people from different cultures. Sometimes the Church has its hardships in this regard for reasons of fear of being understood or accepted, or simply for reasons of convenience. It is much easier to speak to those who think, feel and act in the same way, being part of the same cultural context. The danger here is that the Church contextualizes the biblical message very much, just to make it easier for the mission to work, ensuring somehow the success of being accepted by the different cultures. The great challenge, however, is to bring the gospel in the purest, but also the most appropriate way for those who need its message of salvation.

## References

- Aiftincă, M. 2003. „Global Culture and Cultural Identity.” In *The Church in the Age of Globalization*. Alba Iulia: Reunion Publishing House.
- Bauman, Z. [f.a.]. *Globalization and its social effects*, translated by Marius Conceatu. Filipeștii de Târg: Antet Publishing House.
- Brune, F. 2005. *Happiness as an Obligation - Essay on Standardization through Advertising*. Bucharest: Trei Publishing House.
- Cathelat, B. 2005. *Advertising and Society*. Bucharest: Trei Publishing House.
- Cescon, B. 2003. „Globalization - Spiritual and Theological Perspectives.” In *The Church in the Age of Globalization*. Alba Iulia: Reunion Publishing House.
- Clement, O. 1997. *Truth and freedom. Orthodoxy in Contemporarity (Dialogues with Ecumenical Patriarch Bartholomew 1)*, translated by Mihai Maci. Sibiu: Deisis Publishing House.
- Ferreol, G. 1998. *Dictionary of Sociology*. Iași: Polirom Publishing House.
- Fourie, P. J. 2007. *Media studies. Institutions, Theories and issues*, Vol.1. Cape Town: Juta & Company Ltd.
- Giddens, A. 2000. „Globalization: Giddens' dilemma.” In *Runaway World*. New York: Routledge.
- Glenny, Edward W., & William H. Smallman. 2000. *Mission in a New Millenium*. MI: Kregel Publications, Grand Rapids.
- Gusti, D. 1965. *Pages chosen*. Bucharest: Scientific Publishing House.

- Himcinschi, M. 2003. „Modernity, Globalization, Church.” In *The Church in the Age of Globalization*. Alba Iulia: Reunion Publishing House.
- Hirst, Paul & Thompson, Grahame. 2002. *Globalization under question*, translated by Laura Dragomir. Bucharest: Trei Publishing House.
- Ică, I. I. 2002. „Globalization: Mutations and Challenges.” In *The Social Thinking of the Church, Fundamentals, Documents, Analyzes, Perspectives*. Sibiu: Deisis Publishing House.
- Intercultural Communication, Distance Learning Course*. 2014. Cluj Napoca: Babeş-Bolyai University, Faculty of Political, Administrative and Communication Sciences, Communication and Public Relations Department.
- Lemeni, A. 2003. „Globalization - A deburration of the Unification of the World in Christ.” In *The Church in the Age of Globalization*. Alba Iulia: Reunion Publishing House.
- Mantzaridis, G. 2002. *Globalization and universality*, translated by Vasile Răducă. Bucharest: Byzantine Publishing House.
- Pahlavi, P. C. 2003, October. *Cultural globalisation and the politics of culture*.
- Popescu, D. 2001. *The Rootless Man*. Bucharest: Nemira Publishing House.
- Ricoeur, P. 1955. *L'histoire et verite*. Paris: Edition du Seuil.
- Rotaru, I. Gh. 2014. “Globalization and its effect on religion.” In *Jurnalul Libertății de Conștiință*, edited by Mihnea Costoiu, Liviu-Bogdan Ciucă, Nelu Burcea, 532-541. Les Arcs, France: Edition IARSIC.
- Rotaru, I. Gh. 2013. “Aspecte ale libertății religioase în contextul globalizării.” In *Libertate și conștiință. Culegere de articole despre libertatea religioasă și de conștiință*, edited by Ștefan Mateiaș, 49-75. Cluj-Napoca: Editura Napoca Star.
- Sparks, C. 2007. *Development, globalisation and the mass media*. Londra: Sage Publications.
- Tia, T. 2003. „Homo economicus, Globalization and the crisis of the meaning of life.” In *The Church in the age of globalization*. Alba Iulia: Reunion Publishing House.
- Tiplady, R. 2003. *One World or Many? The Impact of globalization on mission*. Pasadena, CA.: William Carey Library.
- Tomlinson, A. M. 2002. *Globalization and Culture*. Timișoara: Amacord Publishing House.
- Tomlinson, J. 2002. *Globalization and Culture*, translated by Cristina Gyurcsik. Timisoara: Amacord Publishing House.

- Tylor apud G. Ferreol. 1998. *Primitive Culture, 1871*. Iași: Polirom Publishing House.
- Vianu, T. 1979. „Philosophy of Culture.” In *Opera*, 8. Bucharest: Minerva Publishing House.
- Waters, M. 1995. *Globalization*. London: Routledge.



## **Ethics and Law — The Role of Legal Ethics Course in the Formation of Future Romanian Juridical Professionals**

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**ABSTRACT:** Morality has connotations and implications in all spheres of personal life and social life. One of these spheres in which morality should be present is the justice system, from which there is the expectation to be a defender of human rights and fundamental freedoms and to make justice. In order to achieve this goal, law professionals must act morally and responsibly, and the laws of a state must integrate the morality in their text and transpose moral principles into practice. A role in the formation of the moral personality of a lawyer is his education, education that must also address the moral dimension. One of the courses addressing this moral dimension is Legal Ethics prepares the student to integrate personal ethics with professional ethics. The purpose of this article is to present the importance of integrating into the School of Law curriculum of the Legal Ethics course and a possible approach to ethics in relation to the law.

**KEY WORDS:** morality, legal ethics, school of law, juridical professionals

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It's been over 9 years since I was invited to teach a course at the Law School of Titu Maiorescu University in Bucharest, Romania. As a result of this

invitation, after a time of reflection and analysis of possible options, I presented the proposal for introducing a new course called Ethics, which soon became a Legal Ethics course. I personally had the honor and opportunity to built up this course from the foundation and to see year after year, the increasing interest of students in this subject, thus demolishing any prejudices that this generation is disinterested in moral issues.

## **The Legal Ethics and Curriculum of the Law Schools**

Why a course of legal ethics among School of Law courses? The starting point was that ethics, and especially legal ethics, is a contemporary necessity resulting both from observing the social realities and from the official documents issued by the national and international institutions about Romania. The EU's recent reports on the legal system in Romania highlight not only systemic errors but also projections of deviant personal and professional ethics. A deeper diagnosis leads to the conclusion that this, the legal system, is nothing more than a projection of a society in great need of moral reform. The most conducive framework for the cultivation of moral values, besides the existing traditional institutions, the family and the Church, is the education system. The Society for Justice, following the realization of the project entitled Legal System in Romania — Independent Report, notes that “The subjects taught and didactic materials used in most faculties of law were not adapted to the new socio-economic and political changes through which Romanian society has passed over the last decade, nor to the requirements imposed by them. Important issues such as European human rights protection, material Community law, logic and legal psychology, legal ethics, Legal Informatics and using the Internet and databases for research, and so on, are missing from the curriculum of the majority of law schools in Romania” (Sojust, 2006).

At this time, more specific the 2008-2009 academic year, when just a few Romanian Schools of Law have updated their curriculum in order to integrate the disciplines mentioned above, I made a proposal to introduce the course of Legal Ethics in the curriculum at the School of Law of Titu Maiorescu University. Until this academic year, according to judge Danilet,

the positioning of the Legal Ethics in the curriculum of Romanian Schools of Law was as follows: “The School of Law from Babeş-Bolyai University, Cluj-Napoca, is the only one that provides for the compulsory teaching of the Legal Ethics course. The Schools of Law from the following universities have an optional course of legal ethics: Lower Danube, Constantin Brâncuşi, Nicolae Titulescu, Tibiscus” (Danilet 2006, 12).

The University of Bucharest, in 2008, included in the curriculum of the Faculty of Law compulsory discipline, Organization and Ethics of Legal Professions, a course offered to students in the first year. The situation was not much different at the professional organizations which offer the licenses for the juridical professions and also provide ongoing training in the profession.

The National Institute of Magistracy, the postgraduate institution that prepares magistrates, has not had for a long time the legal ethics among the requirements for admission to the training program that takes place over a period of 2 years, although the law require that “recruiting magistrates is done based on competition, on the basis of professional competence, skills, and good repute” (Law No.303/2004). Later Legal Ethics was included among the requirements for the admission examination (Decision no. 1045/2015) at the National Institute of Magistracy, in the form of an interview.

Regarding the curricula of the National Institute of Magistracy, they appear to have introduced ethics as a discipline of study under the title Ethics and Judicial Organization at the same time (CSM 2006, 49) as introducing Ethics as part of the admission interview.

The last few years have demonstrated that „the lack of ethics courses in university curricula often prevents law graduates from identifying and becoming aware of the pressure factors and conflicts of interest that they willingly or unwillingly encounter in practice” (Sojust 2006). Besides this motivation to respond to an educational goal, the course of Legal Ethics aims not only to be a presence in the curriculum but rather to promote, through its content, a certain type of ethics, transformational ethics both at a personal and a professional level, rooted in the Christian values. The intention is to publish a book which will organize and updates the content of Legal Ethics notes which I taught over to the students from the School of Law Titu Maiorescu University starting in the spring of 2009.

I am grateful to the president of Titu Maiorescu University and leadership of the School of Law for giving me the opportunity to create and teach this course to the students. For all these nine years I want to thank the generations of students with whom I discussed interesting topics in ethics and I would like that all of them to integrate ethical values, ethics rooted in biblical principles, in their personal lives and in their professional activity. The legal system in Romania can only be changed by people who are changed, and also through laws that reflect the principles of the absolute ethics of the Old and New Testament.

## Legal Ethics and Legal Sciences

Although most studies on the concept of ethics begin with the use of the term in ancient Greek, history forces us to make a much greater leap and look at the significance of this concept as it appears to the Semitic peoples and the Jewish people. The book of the Jewish people is the Torah, a section that is part of the Old Testament Bible today, and this was written in Aramaic and mostly in Hebrew, the so-called Classical Hebrew. A research on this reference text leads to the following conclusion: "There is no abstract, comprehensive concept in the Bible that is parallel to the modern concept of "ethics". The term later in Hebrew refers to "ethics," but in the Bible only indicates the educational function performed by the father (Proverbs of Solomon 1: 8)" (Jewish Virtual Library 2016).

This does not invalidate the presence of ethics in the content of the Torah, and then from the content of the Bible. Professor Gherman states that "the term closest to this moral domain would be *derek* with the meaning of life's way" (Gherman 2012,13). The concept of the pathway, having also a figurative meaning, refers to walking, way, way of being, a way of life. In this sense, ethics is defined by praxis, mean "good practice acquired through long practice; experience, routine (DEX 2009), a new concept for a Jewish philosophy of life. For a Jew to know translates into doing, and not doing what is good leads to the conclusion that that person does not know. Thus, theoretical knowledge becomes useless if the practice is in contradiction with it. In other words, ethics is not just a philosophical "path", it is a "practical"

way, a way to live, “a system that sets standards of fair conduct” (Strong 2002, 68). This system of conduct is not established by experience, but experience, translated into conduct, is a reflection of ethical standards.

In classical Greek, the concept of ethics is more obvious than the Hebrew language, but divergent views on terminology have emerged. All scholars agree that the ethical term comes from the Greek *ethos*, but some professors of moral theology make a difference between the *ethos* (ἠθος) written with *et* and the *ethos* (εθος) written with *epsilon*, arguing that “the ethical term comes from the Greek word ἠθος (and not εθος as some say), ἠθιχη” (Mladin 2003, 6). The arguments behind this distinction are the preference expressed by the Greek poet Homer for the *ethos* (ἠθος), and for him he had the primordial meaning of “dwelling people and animals as well as homeland.” Subsequently, in Greek thought, the term “received the meaning of something in the interior, such as, for example, the conception or the character of someone or a way of acting” (Mladin 2003, 6).

Compared to the discourse encountered in the Greek world, the *ethos*, along with *pathos* and *logos*, gave a structure or organization of Greek rhetoric. Passion or *pathos*, as well as the existence of content, were not sufficient for the effectiveness of a speech. Simply put, using popular language to be moral means to have “spine”, to have a character. Starting from the word *ethos* in its sense of character, Aristotle, the great philosopher of ancient Greece, created the ethical adjective to elucidate a specific class of human qualities, which he called ethical virtues. These virtues represent faculties, characteristics of the character and temperament of man, which are also called spiritual qualities. The other term in Greek in relation to the concept of ethics is the *ethos*, but it is written with *epsilon* (εθος). It resembles “the morals or the morals of a social group, for example, that of a people” (Mladin 2003, 7). By moral (especially used in the plural) we understand “natural or acquired skills, good or bad; lifestyle, private habits” (Șeineanu 1929). A careful observation of the etymology of the two terms used in Greek – ἠθος and εθος – leads to the conclusion that both refer to the same field of personal and social life, namely ethics, the first emphasizing more on the internal ethics forum, the second external forum, more precisely the projection of character in behavior. In fact, the linguistic researchers “state that both words – ἠθος

σι εθος – would have the same stem (sedhos or svadha)”(Mladin 2003, 7). In Latin, the term ethics was simply translated by the great philosopher of ancient Rome Cicero, but keeping the meaning he had in Greek. Cicero wrote about moral philosophy by understanding the same sphere of knowledge that Aristotle called ethics. The term resulting from translation is the adjective *moralis*, which is derived from the *mos-moris* noun meaning custom (Mladin 2003, 7). *Mores* indicate the habits, behavioral patterns that one can observe in a culture or in a particular society. Besides this notion of *moralism*, the concept of *philosophia moralis* emerged, a concept used for the first time by the Roman stoic philosopher, Seneca (Rotaru 2005, 204).

Thus, ethical and moral, two different terms, complement each other with their individual meanings, not being isolated in their field of application, only publicly or only privately, but together contributing to the theoretical and practical construction of a life philosophy anchored in moral principles.

Equally important for our study are the concepts of justice, just and unjustly reported on the behavior of people in service, in society or in their own family. Here we do not refer exclusively to the idea of justice or to the idea of a judicial institution, but rather to what is right, that is, according to the truth, to social reality at one point. His just opposite leads us to the idea of unjust, incorrect, illegitimate, unacceptable, unfair, unlawful, immoral, and so on. The name of justice derives from the Latin *justus* who, according to law, in his / her turn comes from *jus / juris* which mean *justice*. The original meaning of *jus* is religious, having the connotation of sacrifice, engagement through a sacred formula.

Legal ethics is a branch of legal science, being treated as an independent science; a system of moral norms applied to the legal activity. In particular, the moral norms are investigated and coded in their standards of conduct. Ethics is a scientific discipline because within it two categories of problems are elucidated: a) Theoretical - nature and moral essence; b) Practical – the principles and norms by which man should lead in life. Legal ethics contribute to the systematization, analysis, and explanation of the moral phenomenon in its entire complexity by studying structures and character development, the internal and external connections of various moral phenomena as well as causal factors and moral progress. In the legal sciences there are subsystems such as: a) Historical legal sciences; b) Legal branch sciences; c)

Supplementary legal sciences. Supplementary legal sciences or helping legal sciences, though not part of the legal system of law, are indispensable to legal phenomena and to the application of legal norms, like forensics, criminology, judicial statistics, logic and legal rhetoric, legal medicine, ethics and so on.

## **A paradigm of legal ethics**

Based on my personal research, the objective of legal ethics is to study the personal ethics, professional ethics and legal ethics, as well as the relationships between them. The legal ethical model I propose includes the study of personal ethics, the study of professional ethics, also called professional deontology, as well as the study of the ethical aspect of legal norms. So I define legal ethics is a branch of the legal sciences that study the personal and professional conduct of a jurist in order to acquire and maintain the respect and confidence of society, as well as manifesting preoccupation for the ethics of legal norms.

Maintaining balanced focus on these three issues offers the following advantages: a) Ensure a holistic approach to ethics by avoiding behavioral dichotomy; b) avoiding, increasing corruptibility at different levels of society; c) conferring personal and professional authenticity; d) elaboration of morally well-founded legal norms and contributing to the preservation and promotion of ethics in society.

The three areas of the study of legal ethics are on the one hand both in a relationship of mutual conditioning, each of which contributes to the existence of the other and in a complementarity relationship in that each adds dimensions and supports the development of the other.

In conclusion, legal ethics is a discipline that should not be missed in the curriculum of the future jurist. The healthiest model of legal ethics should not first address the activity of jurist, but the person of the jurist. Also, about the relation between justice and morality, according to Mircea Djuvara "the most important feature of law and morality is the one that determines the specificity of these two sciences in relation to other social sciences: ethical and legal normative. Both moral and legal rules are normative rules that apply prescriptively to social reality" (Djuvara 1995, 320).



## References

- Danileț, Cristi. 2006. Report on Justice – Juridical Education, <http://www.cristidanilet.ro/continut/carti-monografii/2006-raport-justitie/97-12-invmantul-juridic>, accessed 18.12.2018.
- Djuvara, Mircea. 1995. *General theory of law. Teoria generală a dreptului*, Bucharest: Ed. ALL.
- Gherman, Daniel. 2012. *Ethics: A communication of moral beliefs in different traditions*, Bucharest: Ed. Granada.
- Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/ethics>, accessed 18.12.2018.
- Mladin, Nicolae, et. al. 2003. *Orthodox Moral Theology*. Alba Iulia: Ed. Reîntregirea.
- Rotaru, Ioan-Gheorghe. 2005. *History of philosophy, from the beginning to the Renaissance*. Cluj-Napoca: Presa Universitară Clujeană.
- Strong, James. 2002. *Exhaustive Concordance of the Bible - Universal Subject Guide of the Bible*, Nashville: Thomas Nelson Publishers.
- Șeineanu, Lazăr. 1929. *Universal Dictionary of Romanian Language*, Bucharest: Ed. Scrisul Românesc, Six Edition.
- \*\*\* Decision no. 1045/2015 of Superior Council of Magistracy (CSM).
- \*\*\* DEX . 2009. *The explanatory dictionary of the Romanian language, Second Edition*.
- \*\*\* Law No.303/2004 On the status of judges and prosecutors.
- \*\*\* Superior Council of Magistracy (CSM), 13.02.2006, [old.csm1909.ro/csm//linkuri/13\\_02\\_2006\\_\\_2954\\_ro.doc](http://old.csm1909.ro/csm//linkuri/13_02_2006__2954_ro.doc), accessed 18.12.2018.
- \*\*\* SoJust — Society for Justice, <http://www.sojust.ro/publicatii/sistemul-juridic-din-romania-raport-independent-2006.html>.



## Valued and Devalued Landmarks of Postmodern Ethics

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**ABSTRACT:** In this study, we try to capture the phenomenon of redefining ethics at a proposal level. Human society in general and European and American society in particular have detached themselves from the ethical classicism that has lasted for millennia. The authority over the historical taboos at this beginning of the millennium is unique in the history of mankind and unique in its actions. Supported by scientific discoveries, contemporary society manages to value the unethical classic and devalue intrinsic ethics in ways that propose a completely different ethics. We intend to debate this reality from a perspective with slight biblical accents and yet equidistant in discourse and conclusions. The three parts of the paper—*Devalued Biblical Ethical Landmarks*, *Valued Humanist Unethical Landmarks* and *Valorisation and Devaluation of the Ethical Being*—are also the paradigms through which we evaluate this redefinition of ethics.

**KEY WORDS:** ethics, ethical valorisation, ethical devaluation, ethical being, humanism, unethical, stability-in-change, the being of obedience

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### Introduction

The ethics of biblical Christianity has fallen! Beginning with the 13th century, with the onset of Renaissance humanism in Italy, were established the bases for the change in accents in all social and ethical fields. Nothing was to be the same. The only stable reality would be the change. *Stability-*

*in-change* would clump with every century, reaching at the beginning of the third millennium a kind of socio-philosophical psychosis or an ecstasy of the *different*. The taboos are removed, anything ethical can be unethical and ethical can be done differently. It's a *different* that recognizes its ethics and recognizes the ethics of all the other *different*s. The so-called mutual respect or unconditional acceptance of the mentality of the other makes almost any attitude and behavior ethical. This reality has origins in landmarks whose valorization is changed. "Ethics, notes Norman Geisler, deals with what is morally right or wrong. Christian ethics deals with what is morally right or wrong for a Christian" (Geisler 2008, 3). Intentional or not, Geisler puts a fixed emphasis on the term with the most subjective semantic load, a term that is claimed by Philosophy, Theology, Christianity, Atheism, and so on, a term that has nothing to say in a *fixed* way. This is the term *morally*.

Resorting to dictionaries, the situation does not change too much. The American Heritage Dictionary notes the following next to the word *morally*: "Of or concerned with the discernment or instruction of what is good and evil" (Berube 1983, 444). The Romanian Explanatory Dictionary also notes that *morally* refers to the reality "which belongs to morality, conduct admitted and practiced in a society..." (DEX 1996, 652). *Morally* in Antony Flew's dictionary is "the opposite of *immorally*" (Flew 1996, 233), and Julia Didier (1996, 217) states that morality is "the science of good and the rules of human action." These definitions compel us to observe that *morality* is the reality that people acquire in relation to an emphasis they consider to be fixed. This fixed point for some is God, for others it is their own reason, for others it is a certain type of society, a certain code of laws, etc. In other words, ethics derive *from* a choice and it is not the object of choice at all.

This reality validates and demands the way we address the topic announced above. Valorisation and devaluation of postmodern ethics as a scientific research will constitute an attempt to highlight the intercomplementarity between the choice of life landmarks and the determination by them of a certain ethics in our lives.

## 1. Devalued Biblical Ethical Landmarks

Biblical ethics or biblical morality are the object of the preoccupations of all religious or philosophical orientations of contemporary society. This is

due both to the polemics about the existence of God and to the fact that the foundation of human behavior originates in the Bible, origins that nobody can challenge. From the ethics of a card game to the ethics of royal house behavior, each person is sooner or later confronted by the way he respects morality, even if it does not explicitly be subject to judicial sanctions.

At the beginning of the book on Christian morality, Mantzaridis (2006, 9) notes the following: "God is good and the source of all good. Evil is the denial of good. Good unifies and holds together those separated, while evil divides them and breaks the united ones." With this statement, the author preconditionally accredits any opinion that the landmark of ethics is God, and the landmark of its violation is Satan. Moving the emphasis from God's existence on human existence and from biblical absolutism to secular relativism reduces the radicality between God and Satan as to what can be good and what can be bad. This phenomenon has begun in the Garden of Heaven, but the maximum odds are reached only in contemporary society when humanism declares that "the moral ideas are not certain but provisional; no fixed rule of life can be said to be universally valid for all people in all places and times" (Henry 2004, 93). This new perspective on the lack of universality of ethics will lay the foundation for the devaluation of traditionally inherited education and the devaluation of biblical ethics. Man is no longer willing to behave in relation to a supposed future judgment of what is right or wrong, but any action that assures him or her immediate good or pleasure is considered to be ethical.

Against this background of sociological behavior, the Bible is reinterpreted or abandoned. At a severe analysis of the biblical text we will notice that the whole of its writings contains only one ethical dimension, the ethic of righteousness that is antithetic to sin. Falling from biblical ethical behavior is actually a falling from righteous behavior. "Both in the Old Testament and in the New Testament sin is conceived as a negative thing, that is, opposed to the divine will and order" (Mladin et al. 2003, 385). In other words, righteousness is the ethics of God, and sin is its non-compliance. Postmodernist ethics values and devalues behaviors and beliefs in relation to a seemingly and immediate good, but this reality does not solve in any way the crisis of human existence. Although, to unleash biblical teachings, we appeal to logic and reason, to culture and context, sin and/ or passion do

not in any way require the idea of reason, logic. "Sin is something irrational. Everything in the world is rational, based on a divine reason, but sin is irrational" (Stăniloae 1981, 58). The issue of ethics has always been a problem of sin. Sin was an unethical attitude, an attitude that you can only evaluate in its context, but one cannot explain it there either. When we talk about a devaluation of biblical ethics, we talk about a post-modern attitude by which we call for the right to a freedom that will mutilate us. At the same time, we call for the right to control this reality in order to protect our lives against suicide. This is the attitude of the contemporary morality that leads to the war against the being as Image of the Being. Ignoring the existence of God or incriminating Him about all that is happening do not solve the unethical character of the contemporary perspective of living. "The origin of sin must be sought only in the free will of man, so in the moral freedom with which he was endowed by God through the act of creation" (Zăgrean 2002, 133). The devaluation of biblical ethics is a behavioral repetition by which we use the moral freedom God has endowed us with, against our own existence.

As we have recalled above, the biblical ethical reference, which constitutes the superlative of the fulfillment of the being, is righteousness. Through the breaking of any deformed, sometimes prosaic action, we uncontrollably overshadow the righteousness that is identical to the ethics and the same to God. The devaluation of the Bible does not facilitate the promotion of the new morality or the new ethics, but promotes an ethical liberty within which the destruction of the being is build. "God is *beyond being* in the act of the creative freedom of a just humanity. This revelation of God disturbs the human order of life and thought and appeals to a new thinking and social order" (Cattin 2006, 67). The renewed thinking and social order is not about the use of human fantasy, nor its ability to make other things, but this renewal is about restoring an ethics that allows the uninterrupted presence of God.

In conclusion, the devaluation of biblical ethical landmarks will not remain a pride of human achievement, but rather will build up a behavior foreign to ethic and familiar to undermining common sense. The willingness to valorize and devaluate, whichever is at hand, does not create other hierarchies, as we would like to believe, but reduces the ethical value to

nonvalue, creating confusion and irreversible slippages. When a man, on the basis of the offered possibility, turns into a woman through surgery, the road back is closed.

So, the postmodern ethics becomes increasingly powerless with the help of its power to create the new morality.

## **2. Valued Humanist Unethical Landmarks**

Good and evil or this antagonism that makes hard-to-define happiness have always claimed the absolute origin and identity. When we talk about the valued unethical, we talk about a deliberate and intentional relativization which we use to dismantle the above antagonism and to give new identities to good and evil, according to preference, interest or convention. This approach can be understood as a process of society development or as a process of replacing traditional values. Regardless of what it is, the phenomenon of valorisation of the unethical is one very advocated by contemporary society. Hume (1987, 124) noted: "Nothing is freer than human imagination; and although it can not overcome that original background of ideas provided by internal and external senses, it has unlimited power to mix, combine, separate and share these ideas, giving rise to a wide variety of fictions and visions." In this line, modern man suppresses his dependence on God in favor of self-dependency or uncertainty, this human endowment that we use to self-determine in any matter that gives us the freedom to deny God's existence in favor of understanding between us and obstructs us, at the same time, the pleasure of having a Master. "The 18th century has greatly contributed to the weakening of human-divine relationships, between man and absolute. Theoretical speculation has begun to be limited, little by little, to the knowledge of things in this world. The absolute goes beyond understanding, and the divine is either ignored or the object of a belief, but in any case never the object of knowledge" (Graf 1997, 52). This manner of intellectual-spiritual manifestation is in fundamental opposition to God's view of the need to know Him. Evangelist John, concerned about this issue, notes the following: "And this is life eternal, that they might know You, the Only true God, and Jesus Christ, whom You hast sent" (John 17:3). This

withdrawal from God's knowledge combined with the impossibility of understanding the Absolute gives the courage and tenacity to the human beings to reposition themselves, replacing resignation with time.

Valuation of the unethical has to do with the permissiveness of the human being to re-discuss on grounds of reason and judgment, unethical behaviors which, until yesterday, refused their own questioning through their nature. Euthanasia, transplant, homosexuality, gender change, incest, etc. were taboos that could not be discussed. No one has posed the problem that being a male can be a disease that one can try to treat. The questioning of these taboos implied in the past a gross act of immorality.

From the moment society has consented to valorizing the unethical, all these towers of classical humankind began to collapse irreversibly. This phenomenon forced the devaluation of old self-esteem and the valorization of old selflessness, proposing the neo-man, or neo-being. Avoiding falling into ridiculous by some scientists has blocked the possibility of questioning whether the valorisation of unethical humanist landmarks is progress or mutilation. We are thus witnessing an incredibly strong phenomenon that has only one scientific and moral argument: *we want*.

Valorising the unethical humanist landmarks has to do with existential dualism: the being and the fearlessness of the mind or thought. The being endures the courage of the mind and sustains it, and may lack all its components that would not necessarily affect the existence. This reality bears the emblem of ethics. Therefore, the being supports the mind's courage to amputate the feet, hands, etc. if this still assures the life of the being. In this covenant, neither the being nor the courage of the mind poses the question of ethics or unethical. It all goes naturally and on its own. When, however, it is a heart transplant, the ethic of the being becomes identical to its existence. In this case, man has to get into a state of unconsciousness, or even more, so that others can make a decision for transplant. Why? Because if the one in question were aware, he would not do it. Heidegger (1998, 297), in his letter on "Humanism" overcomes the thought with the existence of being and subordinates the thought to the being. He says that "what, however, is before anything, is the being. The thought accomplishes the relationship of being with the essence of man. It does not make this report and it is not the

origin of it." Under these circumstances, the postmodern perspectives on morality undermine the ontological relationship between being and thinking and puts them in conflict. Valorisation of unethical humanist landmarks constitutes in this case the creation of an open conflict between being and thinking. This means opening a war theater aimed at suppressing the being by the bravery of the mind. This should call into question the valorisation of the mind's courage; up to where its decisions are virtues and beginning from where can we talk about dementia?

In conclusion, the valorisation of unethical humanities landmarks will not only respond to fantasy or love for the new, but at the time of their full realization, they will suppress the being and create the premises for its irrevocable destruction.

### 3. Valorisation and Devaluation of the *Ethical Being*

In this chapter we want to bring to attention the interchangeability as a way of solving the existential crisis, or as a way of solving the tension between the old and the new, between the good and the evil, the willing and the imposed, etc. This solution is achieved by creating an infrastructure of existence whereby all contradictions can be interchangeable not only through positioning but also through content.

The ethical being was once the only reality that claimed and confirmed the existence of actions or attitudes that were ethical in themselves. They could not be different no matter the cultural location or religious, sociological or philosophical orientation. An example of an ethical being is the metaphysical reality of the encounter between children and parents. We will call it *the being of obedience* in our study. For millennia it was ethical that any child should be subjected to his parents and the reverse behaviour was unethical. This had as landmark either the Holy Scriptures or the oral inheritance left by God through the verbal revelation or the determinism of the human physiological existence similar to the animal kingdom. We will not provide an argument to confirm which of the three theses above is authentic, but we will not neglect that no matter which one is, for many centuries or millennia, as noted above, *the being of obedience* was considered



ethical in itself. Devalorizing the ethical being based on the valorisation of the rights of the child, or on the basis of the valorisation of sporadic and isolated abuses, which later were generalized intuitively, without evidence, determined the possibility that *the being of obedience* to be evaluated and dismantled. In this new perspective, the attitude of obedience and subjection of a child towards his/her parents can be considered unethical. "We live in a time when the traditional role of parents has been seriously questioned. Virtues such as altruism, religious belief, obedience, honor, spirit of justice, and simple courtesies have been replaced or substituted by selfish attitudes such as self-valorisation, licentiousness, the spirit of competition constantly duplicated by the concern to think and act *politically correct*" (Breck 2006, 82). Under these circumstances, there was a re-placing of *the being of obedience*, and in a relatively short time the old attitude would be stigmatized by the new educational guidelines. Nobody has questioned the price of all these. In fact, *the being of obedience* was violently killed. This will give a fundamentally different and unpredictable course to human existence.

When we talk about the valorisation and devaluation of the ethical being, we talk about a path from the past to a future that intersects the present. Redefining ecstasy as agony, and redefining agony as ecstasy or blending them to create a new state, refuses to take into account one of the few realities that make us superior to the animal kingdom and superior to our own existence, that is **love**.

Valorisation and devaluation of the ethical being is done out of love. "In love and through love, the person discovers that his way of being is an existence *for* and *with*" (Mărtincă 1999, 13). Thus, the child no longer reports to himself or to the "hallucination of free existence", but relates to his parents, to his superior reality, a reality that by mere presence constrains his attitudes and redefines them in subjection and obedience, that is in *the being of obedience*. This is because I exist *for* and I exist *with*, for my parents and with my parents, an existence identical to love. This phenomenon contradicts the valorisation and devaluation of the ethical being and dismantles the existence of the self for that self. "Not the infinity in itself gives the joy of love, but its representation by another person than our own" (Stăniloae 1993, 64). Re-valuing the ethical being on criteria other than love of divine mode and



manner is in fact a deliberate attack on the subconscious of human existence. We have to deal with the intention of reprogramming the human patterns, not knowing what can produce such a psychosomatic movement. We do not know whether the Creator of the human being will be permissive to this reprogramming of the way of existence of the human being, but we know that the mirage of novelty is a phenomenon that can no longer be controlled by anyone.

With the ethical being disappearing, we can talk about situational or conventional ethics. By reducing to absurd, this assumes that there is nothing unethical. There are situations in which we can have different opinions, there are situations that can be the subject of controversy or complementarity, there are situations that can mutually reject themselves, but there are no longer unethical situations. Suddenly I drew a term out from the lexicon of existence itself! It's about talking about absolute and absolutizing the convention or the situation. In this case fixed landmarks are replaced by moving landmarks and their movement remains under the responsibility of the imperfect substituting the Perfect.

Speaking of justice, Aristotle notes the following: "Everyone agrees that in the matter of distribution, justice is in relation to merit, but not all of them understand the same thing by merit; the democrats see in it the free condition, the oligarchs, wealth or noble origin, the aristocrats, virtue" (Aristotel 1998, 110). If we replace justice with morality, from this Aristotelian equation, it will necessarily result that situational or conventional ethics is a reality that depends on perspective or guild, in no way on something absolute. In fact, this is the prospect of ethics in postmodern society. In other words, any ethical reality can be devalued. Everything is just a matter of time.

In conclusion, the phenomenon of valorization and devaluation of the ethical being should impose scholars some other considerations than those mentioned by us and the rest of those present. The ethical thing can not be reprogrammed without the arithmetic evidence that we have today. The assumption that it will be good or otherwise does not guarantee in any way the discarding of our own existence.

## Conclusions

Finally, we can say that the foundation of the concept of ethics is no longer conceived in the classical or even modern way. By redefining God within the human conscience or by renouncing His existence, the contemporary society has discovered that no one but itself has the authority to interrogate it about what it does. This freedom, unique throughout the history of the world, has accredited the current political power and its infrastructures to embrace the valorisation of segments of human existence that were incriminated. Divorce, child abandonment, gay adoption, full independence within the family, changing gender, etc. are just a few examples on which operates an ethic dimension different than the familiar one of the past century.

If we subjectivize the divine absolute in which the classical ethical had a landmark, then it is quite difficult to reproach the new dimension of ethics. It is very probable that future decades will provide us with evidence of this type of thought, which will accredit or discredit what is happening today at this level.

## References

- Romanian Academy – “Iorgu Iordan” Institute of Linguistics. 1996. *Dicționarul Explicativ al Limbii Române (Explanatory Dictionary of Romanian Language)*, 2nd edition. Bucharest: Univers Enciclopedic Publishing House.
- Aristotel. 1998. *Etica nicomahică (Nicomachean Ethics)*. Bucharest: Scientific and Encyclopaedic Publishing House.
- Berube, Margery S. 1983. *The American Heritage Dictionary*. USA by Houghton Mifflin Company.
- Beaufils, Dominique, Bobrinskoy, B., Breck, J., Clement O., Hiffler, C., Chrissavgis, I., Meletios, Peckstadt, I., Roberti, J., Vergely, B. 2006. *Bioetica și taina persoanei – perspective ortodoxe (Bioethics and the Mystery of the Person - Orthodox Perspectives)*. Bucharest: Bizantină Publishing.
- Cattin, Yves. 2006. *Marile noțiuni filosofice (Great Philosophical Notions)*. Bucharest: The European Institute Publishing House.

- Didier, Julia. 1996. *Dicționar de filosofie (Dictionary of Philosophy)*. Bucharest: Univers Enciclopedic Publishing House.
- Flew, Antony, 1996, *Dicționar de filozofie și logică (Dictionary of Philosophy and Logic)*, Bucharest: Humanitas Publishing
- Geisler, Norman L., 2008, *Etica Creștină (Christian Ethics)*, Oradea: Metanoia Publishing
- Graf, Alain. 1997. *Marile curențe ale filosofiei moderne (The Great Currents of Modern Philosophy)*. Bucharest: The European Institute Publishing House.
- Heidegger, Martin. 1998. *Repere pe drumul gândirii (Landmarks on Thinking)*. Bucharest: Politică Publishing.
- Henry, Carl F. H. 2004. *Etica creștină personală (Personal Christian Ethics)*. Oradea: Cartea Creștină Publishing.
- Hume, David. 1987. *Cercetare asupra intelectului omenesc (Research on the Human Intellect)*. Bucharest: Scientific and Encyclopaedic Publishing House.
- Mantzaridis, Georgios. 2006. *Morala Creștină (Christian Morality)*. Bucharest: Bizantină Publishing.
- Mărtincă, Isidor. 1999. *Etica doctrinei sociale creștine (Ethics of Christian Social Doctrine)*. Bucharest: 100+1 Gramar Publishing.
- Mladin, N., Bucevschi, O., Pavel, C., Zăgrean, I. 2003. *Teologia morală ortodoxă (Orthodox Moral Theology)*, 1st volume. Alba Iulia: Reîntregirea Publishing.
- Stăniloae, Dumitru. 1981. *Teologia morală ortodoxă (Orthodox Moral Theology)*, 3rd volume. Bucharest: The Bible and Mission Institute of the Romanian Orthodox Church Publishing House.
- Stăniloae, Dumitru. 1993. *Sfânta Treime sau la început a fost Iubirea (The Holy Trinity or At the Beginning Was Love)*. Bucharest: The Bible and Mission Institute of the Romanian Orthodox Church Publishing House.
- Zăgrean, Ioan. 2002. *Morala Creștină (Christian Morality)*. Cluj Napoca: Renașterea Publishing.

## **Are Codes of Business Ethics Ethical?\***

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**ABSTRACT:** In response to a quickly evolving legal environment and more generally to changing conceptions about the role and responsibilities of the corporation and its executives, many firms have adopted codes of ethics whose legal relevance is uncertain, and whose relation to actual ethics is largely problematic. First, it is necessary to analyze the theoretical model of these codes, as business environments tend to be assessed in terms of “business ethics”, which is conceptually difficult not to discount, since ethics should possess a universalist vocation, hence the necessity to seek whether there could be a variety of ethics which could bear the same validity. More generally, can individuals (or corporations) bestow upon themselves any set of chosen ethical rules? We propose that ethical codes actually mimic and anticipate what legislators or judges have (or will have) considered as ethical behaviors. Since the law is itself an imitation of ethical rules, codes of business ethics are therefore imitations of imitations. The works of Kant and Levinas, in particular, will serve as points of reference.

**KEY WORDS:** ethics, business ethics, ethical codes, corporate governance

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## Introduction

1. The Holy Roman Empire, wrote Voltaire, was neither holy, Roman nor an Empire. Likewise, codes of ethics are not codes. More aggravatingly, they have very little to do with ethics. Many see the temporary trend towards privately-issued codes as novel and surprising, however, one must keep in mind that among all the branches of law, business law is probably the one whose reliance on self-regulation and generally a polycentric model of legal production is the most significant. The same tendency towards a stateless law is verified by the constant recourse to non-governmental means of resolutions of conflict, such as indemnity clauses, mediation, arbitration etc.

The most striking feature of these codes of business ethics (here the observed terminology hesitates a bit in practice between the aforementioned term and “code of ethics”, and “ethical code” – as the article demonstrates, the latter is rather incongruous), however, is that they predicate rules for the very party which, in principle, apply exclusively to the very entity that has established them. To such extent, they are comparable to oaths or wills. A more malicious analogy would mention conflict of interest policies, with the same existential doubt at stake: can a corporation be virtuous enough that we should trust it to define how virtuous it ought to be? Does one get to elect the ethical rules one wishes to live under? Would it be more intellectually coherent if the content of those ethical rules were imposed upon me by another person? More generally, can one split Ethics in discrete sets of rules and pick the set one wishes to comply with? We stumble here upon some of the many paradoxes that would propel the research in many directions. Essentially, we propose that the main source of difficulty lies in the fact that ethical codes present themselves as solutions, whereas there are only ethical problems.

2. A rigorous epistemological approach requires at least a summary recension and/or taxonomy of the existing ethical codes, which appear to be either adopted directly by companies or, in other cases are adaptable standards.

3. *Company-scale ethical codes.* An ethical code is an official statement of values and business practices. This document formalizes a number of actions and standards, and aims to engage the company. By making public its ethical

code, a company commits itself directly to implement it, and to make it apply by all actors revolving around it. Thus, many companies are designing their own ethical codes. This might be because they are better able to propose rules that are appropriate to their context and therefore easier to implement.

Ethical codes are an affirmation of core values of companies. It is a document that guides actions and decision-making. Ethics in this regard is essential because it creates trust and transparency within the framework of companies' activities. Ethical codes are normally intended to help each employee or company's stakeholder to go beyond simply complying with applicable laws.

4. Current economic and trade relations are characterized by the need for companies to position products (goods and services) on the market in order to guarantee certain profitability. To achieve this, they need to build a new image, necessarily positive. To this end, multinational companies, in particular, want to impose their own rules, typically to fill a legal vacuum. This is why ethical codes are above all engaging acts. They are the guideline of companies, the thread of their action. Ethical codes are the textual translation of corporate commitments (Paredes 2011, 94-101).

5. *Ethical standards.* We will distinguish between standards developed by international organizations, or those proposed by consortia or private companies. Many international organizations have issued a number of rules for multinationals to promote, for example, respect for the most fundamental human rights. For example, Conventions of the International Labor Organization (ILO) set standards for all aspects of working conditions and industrial relations (Gendron 2013, 49-62). Another example is the OECD Guidelines for Multinational Enterprises (1976 and revised 2000), which set out recommendations made by governments to multinational enterprises covering nine areas of business conduct (Brabet 2011, 38-50).

If the implementation of these recommendations by companies is purely voluntary, Governments having subscribed to the principles are however obliged to contribute to their implementation and to promote their application by companies which operate on their territory or from their territory.

6. Among the private instruments used as reference, we can mention:

1. BS OHSAS 18001, Occupational Health and Safety Assessment Series (Rossignol, Drais and Favaro 2016, 153-173).

This is an internationally applied British Standard (BS). Its objective is to help all kinds of organizations to put in place demonstrably sound occupational health and safety performance.

2. ISO 26000 standard. This model is an ISO (International Standards Organization) standard for corporate social responsibility. It defines how organizations can and must contribute to sustainable development (Cadet 2010, 401-439).
3. The Coalition for Environmentally Responsible Economies (CERES). It is an initiative of a non-profit American network of investors, environmental organizations, and interest groups. This network created in 1989 an environmental code of conduct (Oberoi 2013, 31-48).
4. The social certification standard SA 8000 (published in 1998) which defines procedures in the fields of corporate social responsibility (El Abboubi and Nicolopoulou 2012, 392-414).

The AA 1000 standard that manages the balance between economic, social and environmental performance through self-assessment tools put in place for firms. The Global Reporting Initiative (GRI). This is a repository listing the topics to be addressed in social and environmental relationships (Gendron, Ivanaj and McIntyre 2013, 3-14).

There are many ethical and corporate social responsibility initiatives. However, some of these initiatives are only symbolic, while others have a contractual and binding value for both signatory countries but also for companies, which are then required to honor the commitments entered into. Thus, for lack of legal value, they have a real value due in particular to the multipartite recognition of the relevance of their content. In this sense, they constitute a social constraint for companies that could be subject to charges in the event that they do not respect their commitments with reference to those instruments (Payne 2007, 18-28).

7. *Content of the ethical codes.* However, we propose that, in essence, a vast majority of the “ethical” norms set forth by codes of ethics can be summarized by the following excerpt, found in the code adapted at the level of the XPO Logistics company:



*"XPO complies with all laws and regulations that govern dealings with federal, state, provincial, county and local governments, including entities working on behalf of a government, or owned or controlled by a government."*

Or, if one could summarize even more briefly: "the Company will comply with the law".

8. Certainly, one could object to the proposition above that many stipulations found in codes of ethics do not only affirm reverence for the law, but actually go beyond it in an attempt to purport values that the company will strive to foster. To this rebuttal, we respond, in anticipation of the developments below that the intention of the draftsman is probably to manifest its intent that the company will comply with the *intention* of the law, or (and these two formulations may be equivalent one another) to what a judge might decide the application of the law to acts might consist in. To the extent that the above rationale might not be the only one, skepticism as to the ethical intentions surrounding the promulgation of a code of ethics (or manifestation of intent to adhere to an ethical standard) is difficult to rebuke.

9. To support our position, let us seek not what is *ethical* (i.e. what conforms with ethics) but rather what *is* ethical, or in other words, what criteria can be applied to determine if any given action is ethical.

10. The Kantian approach on metaphysics is made explicit in his 1785's opus *Groundwork on the Metaphysics of Morals* (Kant 1785). For Immanuel Kant, an action is not moral because it is compliant with one's duty. It can accede to morality because it was motivated by duty (Kant 1785). The counter-example offered by Kant is that of a wise merchant, who elects not to overcharge a novice customer in order not to sully his reputation of honesty. It is obviously difficult to call such behaviour moral or ethical, insofar as compliance with ethics is in that instance, so to speak, coincidental. It results from the Kantian view on ethics that, in particular, compliance with ethics caused by fear of a legal sanction, or an adverse reaction from the corporation's shareholders or partners should be assessed as not only unethical, but perversely anti-ethical. Schopenhauer, in an essay which, otherwise, is profoundly critical of Kant's views clearly states that an action motivated by selfishness is utterly devoid of moral worth (Schopenhauer 1844).



11. Therefore, the criterion proposed by Kant for *ethicity* is remarkably clear. *A contrario*, any deed whose motivation is outside of the ethics is simply not ethical, and it might be the opposite of that: as Pascal put it “he who pretends to be an angel is a beast” (Pascal 1670) — in other words, there is probably more monstrosity in affecting saintliness than being honest about one’s genuine intentions. Perhaps (but this is subject to a discussion far outside the realm of the present article), the only corporate social responsibility (and thus, conversely the only valid ethics) is that proposed by Milton Friedman: maximise the shareholders’ profit (Friedmann 1962).

12. Authors have argued that the legal system should be content with resulting in a “good enough” justice:

“The perfect justice might be the cleanest in theory, but can be quite messy in practice; a good enough justice accepts compromise to various degrees in common circumstances and while it doesn’t exclude the dramatic exception, it doesn’t live constantly under the pressure of tragedy. It is true that “good enough” would be a hermeneutical concept and it might be that finally, it says not much more than prudence. Therefore, in order to have the advantages of prudence, of a serious devotion to practice that is nonetheless not insensitive to contingent circumstances, such prudence has to be given its proper place in ethical reflection.” (Wolff 2011)

This probably true for *justice*, but not for ethics. The excerpt below is from a quite serious and earnest attempt to reconcile the real-life demands of any legal system and Levinassian ethics. What is Levinas’ proposal?

13. The works of Lithuanian-born French philosopher Emmanuel Levinas have been immensely influenced by the Jewish tradition, by phenomenology, but also, somewhat incongruously by the works of Schopenhauer on the foundations of ethics. If we were to summarise his complex, difficult philosophy, we could say that he regarded the experience of the face of the Other, the realization of the Other’s vulnerability, in particular, as the source for *unconditional, unlimited* responsibility which is indissociable with an equally unconditional, unlimited and transcendent ethics. Through the face of the others, Ethics *imposes itself upon me*, and this irruption occurs *ab origine* – it is not a man-made means of organizing human interactions

but the root of human interaction. It would seem incongruous to admit that one can *elect* to be governed by ethics, and even more so by a particular sub-set of ethical rules (as is the case with ethical codes) – in a Levinassian sense, this would make exactly as much sense as electing to be governed by physics, *except* the third law of thermodynamics (or even worse, with the stipulation that Newtonian laws of viscosity must be followed *diligently* by all staff members, but within the limits of good practices regarding bullying in the workplace).

14. In a sense, the mere fact that the phrase “Business Ethics” exist and is used unironically is a nonsense from a Levinassian perspective. It seems to imply that a particular subset of ethical rules should apply to the world of business, excluding all others, or worse that *altogether different* rules (which reasonable suspicion would hold to be not genuinely ethical in nature) would be used in that instance as an ersatz to Ethics proper. Those hypotheses lay seem exceedingly harsh, but thinking of the example proposed by Kant brings to mind all-too-real example. If business must be governed by ethics, it must be by unqualified ethics, not by “business ethics.

15. Of course, the rationale for the adoption of such an ethical trompe l’oeil would be impossible to understand if corporations, most often represented by their board, did not carry the weight of actual legal responsibilities.

16. Although different taxonomies do exist depending on the legal system at stake (and arguably, on the predominant variety of capitalism in the relevant jurisdiction), the responsibilities of the directors can be summarised as follows: do what is best for the interests of the company (in the British terminology, “promoting its success”) in compliance with the rules applicable under the company’s bylaws and the rules applicable by application of the law, which can themselves be divided under those deriving from the private law subset and those which are applicable as a matter of criminal law. The particular criteria set forth by the law are vague, or at least formulated so as to comprise the immense variability of issues presenting themselves in the course of business activities: “due care”, “loyalty”, “proper purposes”, “adequate consideration” to be received by the corporation etc. – thus, even though it is

universally presumed that the decision or the behaviour is good until proven otherwise, it is impossible to be *certain to be compliant*.

17. Let us examine for instance the case of director's liabilities in Delaware, the place of incorporation of a disproportionately large number of large American corporations, so much that Delaware law is often considered as "common law" in terms of corporation law. For instance, in *Aronson v. Lewis* the Delaware Supreme Court held that "*a presumption that in making a business decision, the directors of a corporation acted on an informed basis in good faith and in the honest belief that the action was taken in the best interests of the company*" which must have signalled a presumption of immunity for directors of Delaware-based companies in the scope of their duty of care. However the case of *Smith v. Van Gorkom*, the Court narrows so much the scope of the solution found in *Aronson* that authors compared the opinion to the explosion of a bomb (Sharfman 2008, 288).

Indeed, the Delaware Supreme Court nearly overturned the *Aronson* findings only one after they were stated, by deciding that in establishing that the directors have complied with their duty of care as construed through the business judgment rule, the court must establish "*whether the directors have informed themselves 'prior to making a business decision, of all material information reasonably available to them'*" so that, from the moment the judge's gavel fell down, not being informed became a breach of a director's fiduciary duty of care owed to shareholders.

18. Most of the contemporaneous literature harshly criticized *Smith v. van Gorkom*, calling it "*surely one of the worst decisions in the history of corporate law*" (Sharfman 2008, 288) or "*atrocious*" (Sharfman 2008, 289). The dissent in the opinion compared it to a "comedy of errors" (Sharfman 2008, 289). Even though some others have found merit in the decision, what is difficult to deny is that it was unpredictable for the directors subject to the trial or to any directors, who could not have reasonably construed the phrase "duty of care" or, with further reason, the recent *Aronson* solution as a signal that they should have started to gather information and document that gathering as fast as they could so as to stand the test of evidence. Hence, what other choice do boards have than striving to pile up as many elements as possible in order that they satisfy the "almost ethical" provisions of the law?

19. The classical distinction holds that law governs our external behaviour whereas the realm of morals or ethics is the conscience (De Naurois 1971, 309). However this geographical criterion does not account for the fact that the law, *at the very least*, aims to reach ethical purposes, or worse to imitate morals (for instance when the judge explores the range of directors' "duty of care", it employs a quintessentially moral terminology. Therefore, when a code of ethics attempts to anticipate or replicate the legal rules approximating ethics, it actually *imitates an imitation*.

20. If the corporate rules were effective, ethical codes would not be so popular. The latter are most often adopted to fill a legal vacuum, thus attesting to the ineffectiveness of corporate law. Black is one of the authors that strongly support this argument.

21. *Black's thesis on the triviality of corporate law.* According to Black (1990, 542-597), State corporate law contains a mix of mandatory and default rules. This author believes that mandatory rules are not effectively compulsory. Their mandatory characteristic is only apparent, it is just a mirage. Black underlines that State corporate law is trivial, in the sense that it lets companies (managers and investors together) establish any set of governance rules they would reasonably want.

Black acknowledges that rules that appear mandatory may be trivial for four good reasons:

1. Some mandatory rules would be universally adopted if people thought about them.
2. Some rules can be avoided by advance planning, including choice of capital structure and state of incorporation.
3. Some mandatory rules are unimportant, in the sense that they cover situations that occur rarely or matter little.
4. Some rules that used to be market mimicking, avoidable, or unimportant may matter, but precisely because these rules matter, they will soon be changed (are circumstances usually change). The political forces that led to the trivialization of corporate law will see to that.

Black supports that many apparently mandatory corporate law rules are trivial in one of these senses. Moreover, proving that nontrivial rules exist is hard, says Black. It is not trivial to disprove the extreme null hypothesis that all of State corporate law is trivial (Black 1990, 542-597).

To convince, Black argues that investors and managers are able, at least with the help of clever lawyers to establish any set of governance rules they want. Therefore, “the mandatory/enabling balance (...) isn’t really there” (Black 1990, 542-597). Corporate law is in fact fully enabling because any mandatory rules are “either avoidable or have no bite” (Black 1990, 542-597).

**22. *Applicability to codes of business ethics.*** The thesis defended by Black is more verified at the international level. At present, there is no regulatory framework that can strictly control companies’ international activities. Indeed, multinational companies do not have an international legal status. By relocating their production, they are freed from a certain number of rules and decline their responsibility vis-à-vis rights violations committed by their subsidiaries and subcontractors abroad. This situation puts multinationals in a position of strength vis-à-vis States that lack regulatory mechanisms (Renouard 2007).

To fill this gap, most companies have developed ethical codes, as a strategy of self-regulation of the framework of their responsibility.

Referring to Black’s abovementioned work, we can assume that ethical codes provisions either:

- + Market mimicking
- + Avoidable
- + Unimportant
- + Prone to obsolescence

But according to Orts, even if Black’s “triviality hypothesis” proved correct, corporate law would nonetheless remain important. All the same, even if corporate law were entirely enabling, it would describe the rules by which economic power is socially structured, which is not a trivial matter, although corporate law would then collapse into a specialized category of contract and property law (Orts 1993, 1565-1623).

Concerning ethical codes provisions, if we only think about imposing rules to make them work, we might make things more complicated. Knowing that humans have the ability to distinguish right from wrong, we agree with Dodd when he says that “there is in fact a growing feeling not only that business has responsibilities to the community but that our corporate managers who control business should voluntarily and without waiting for legal compulsion manage it in such a way as to fulfill those responsibilities” (Dodd 1932, 1145-1163).

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## References

- Black, Bernard. 1990. "Is Corporate Law Trivial?: A Political and Economic Analysis." *Northwestern University Law Review* 84: 542-597.
- Brabet, Julianne. 2011. "Corporate social responsibility and its models in a contested field." *Revue de l'organisation responsable* no. 2: 38-50.
- Cadet, Isabelle. 2010. "La norme ISO 26000 relative à la responsabilité sociétale: une nouvelle source d'usages internationaux." *Revue internationale de droit économique* no. 4: 401-439.
- De Naurois, Louis. 1971. "Discordances entre droit et morale." *Revue Théologique de Louvain* 307-26.
- Dodd, Merrick. 1932. "For Whom Are Corporate Managers Trustees?" *Harvard Law Review* 45: 1145-1163.
- El Abboubi, Manal and Nicolopoulou, Katerina. 2012. "International social-related accountability standards: Using ANT towards a multi-stakeholder analysis." *M@n@gement* 15: 392-414.
- Gendron, Corinne. 2013. "Social responsibility and international law: reflections about labour issues." *Revue de l'organisation responsable* no. 2: 49-62
- Gendron, Corinne; Ivanaj, Silvester and McIntyre, John. 2013. "Introduction. Corporate social responsibility and attitudes towards regulation of multinational companies." *Revue de l'organisation responsable* 8: 3-14
- Friedman, Milton. 1962. *Capitalism and Freedom*. Chicago: University of Chicago Press.
- Kant, Immanuel. 1785. "Grundlegung zur Metaphysik der Sitten." 1998 *Groundwork of the metaphysics of morals*, tr. Mary J. Gregor (1928–1994), with an introduction by Christine Korsgaard (1952–). Cambridge, U.K., New York: Cambridge University Press.
- Levinas, Emmanuel. 1982. *Ethique et Infini*. Paris: Fayard.
- Oberoi, Roopinder. 2013. "Complexity in regulating multinational corporates in global era: understanding the taxonomy of 'power' and 'corporate responsibilities.'" *Revue de l'organisation responsable* 8: 31-48.

- Orts, Eric. 1993. "The Complexity And Legitimacy Of Corporate Law." *Wash. & Lee L. Rev.* 1565-1623.
- Paredes, Carmen Lucía Carmona. 2011. "Decision: The Space between the Code of Ethics and the Ethical Behaviour." *Finance & Bien Commun* 39: 94-101.
- Pascal, Blaise. 1670. *Pensées*. Editions Rencontres (first edition 1960).
- Payne, Clare. 2007. "Ethics or Bust: Beyond Compliance and Good Marketing." *Finance & Bien Commun* no. 2: 18-28.
- Renouard, Cécile. 2007. *La responsabilité éthique des multinationales*. Paris: Presses Universitaires de France.
- Rossignol, Karen; Drais Éric and Favaro, Marc. 2016. "Évaluer l'organisation de la prévention des risques professionnels. Genèse et institutionnalisation d'un outil de mesure au sein d'une branche de la Sécurité sociale." *Terrains & travaux* 28: 153-173.
- Schopenhauer, Arthur. 1844. *The World as Will and Representation*. New York: Dover Press, Volume I, Appendix, "Criticism of the Kantian Philosophy."
- Sharfman, Bernard. 2008. "The Enduring Legacy of Smith v. Van Gorkom." *Delaware Journal of Corporate Law* 33: 287-309.
- Wolff, Ernest. 2011. *Political Responsibility for a Globalised World*. Bielefeld: Transcript Verlag.

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