

## ON LEGAL CULTURE CONCEPT WITHIN TRANSDISCIPLINARITY

Ion Craiovan<sup>1</sup>

### Abstract

The concept of culture has met hundreds of definitions over time. The complexity and multiplicity of approaches legitimate this. The same has implications for legal culture as a particular expression of culture. However, there is also the risk that the relationship between culture and legal culture becomes confusing. Apprehensive of such situation, we tried in our paper to propose the legal culture within transdisciplinarity. Its defining identities, such as: the real-fact distinction, the specific configuration of each level of reality, the existence of several levels of organization of reality, its adjacent areas, the solidarity of the levels, not being able without others, the transition from one level to another according to the logic of the included third, all with corresponding epistemological consequences regarding the juridical spirituality lead to the complex and though multisided aspects of the concept. From this methodological perspective, we have left the traditional concepts of legal culture (J. Arnaud, 1993) to set up conceptual levels from a transdisciplinary perspective, exploring levels and connections unclear in the legal doctrine. Thus, we consider that the scientific investigation of this concept can be achieved considering the multiples dimensions. Therefore, one can distinguish as conceptual levels of legal culture a multitude of issues: the technical culture, in which law is understood as a socio-normative technique of specialized legal knowledge, inherent in the profession of lawyer, with sub-levels involved in legal professions, branches of law and legal institutions, conceptions of justice and justice in a given society, the concepts of humanity as society, man, thinking, knowledge, consciousness, value, norm, communication, action, and so on., deeply involved in any legal process; the founding concepts of legality such as order, power, legitimacy, freedom, coercion, norm, sanction, justice; understanding of man and the meaning of life expressed by philosophy of *perennis-philosophy* that has proven its persistence and value in history.

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<sup>1</sup> Professor of law, Director, International Institut for Human Rights, "Dimitrie Cantemir" Christian University, Bucharest, President of IVR Romanian section, member of the Academia Europaea , e-mail: [icraiovan@yahoo.com](mailto:icraiovan@yahoo.com)

In this sense, we have the epistemological hope of contributing to the conceptual organization of the legal culture, the visibility and the operability of this concept.

Key words: culture, legal culture, conceptual levels, transdisciplinarity

## I. PRELIMINARIES. HOW WE BUILD CONCEPTS

Aristotle still defines the concept<sup>2</sup> as the essence of things that receives the characters of necessity and universality. In addition to this approach, the "concept as essence," (essentiality), which supposes the existence of an essential nature of the designated work, such as the essential structure of the legal system at Kelsen. The "concept as a sign" (conventionalism) "the one by which one is defined" (the Stoics, Abelard) may be mentioned as a conventional use of legal terms or legal pragmatism (G. Pavlakos) which extracts what is defining for a concept from the exemplary practice. Legal conceptualism notes the inherent need for conceptualization in law by which the facts are attracted to the field of legality, pointing out that, to the extreme, the law can be a concept without judges or tribunals but not without legal concepts. As for conceptual variety, one can retain concepts such as: empirical, extracted from experience or the *a priori* forms of intellect (I. Kant) that make phenomenal knowledge possible, categories, primary concepts (birth, death), reflexive (clause) concepts, clear or obscure; defined or indeterminate concepts; quantitative or qualitative. The functions of the concept in the legal field can be descriptive, classifiers, organizers, forwarders, designing the experience, etc. pointing out that legal conceptual structures are specific and context-dependent. From the positions of analytical philosophy, it is argued that conceptual analysis is the appropriate tool for discovering the nature of legal institutions. Hart argues that each term has a unique, unacceptable central acceptance of disputes, determined by common linguistic use, which can be revealed by the context analysis and the reference to common language.

The transdisciplinary perspective, on which we will go a long way, can be another approach to constructing concepts, in disciplines, between disciplines and beyond.

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<sup>2</sup> *L'Enciclopedia della filosofia e delle Scienze Umane* (Istituto Geografico De Agostini S.p.A., Novara, 1996) (trans.- L. Cosma, s.a., All Educational, București, 2004), p.174

## II. CULTURE AND LEGAL CULTURE

Knowledge activity is a necessary prerequisite and also a constituent element in any act of culture.<sup>3</sup> Knowledge is a complex process of reflection, construction, reconstruction, understanding, explanation, prediction and evaluation of the world in the human mind.

Knowledge, however, is not sufficient in itself to give a unitary picture of what culture is. Value appears to us as a fulfillment of knowledge, in which the product of knowledge relates to man, to his needs, aspirations, purposes. So before being a value embodiment, involving appreciation, value judgment, culture is the crystallization of knowledge. The two moments engage each other in defining culture: if value is preceded and conditioned by knowledge, the latter leads necessarily, on a scale of society, to value. Knowledge products are by their very nature and genesis susceptible to valorisation on the human plane, so they are potentially or actual values for humans.

The acts of culture imply a specific virtue of man - creativity, the principle of genesis of values both on a phylogenetic scale (man as a species), and on an ontogenetic scale (man as an individual). As a creator, as a receiver of culture, man must act as a free person, but also as a social being.

Cultural values are accomplished and perfected through communication, movement and interpretation in the ways of life and work of people in their spiritual universe. A cultural value unacceptable to anyone, which does not become a component of individualities and human communities, denies itself as value.

Culture is "an open and integrated and coherent system of values" and civilization is "the active meaning of culture and the universal vocation of man." A cultural value or a system of values is a possibility of civilization, but the reality of civilization itself presupposes the realization of the social function of cultural values, their integration in all the compartments of social life, civilization being in fact "culture permeated in all the cells of social life".<sup>4</sup>

The main way in which the civilizing function of culture is realized is the technique, itself a cultural value. In any culture, man's hypothesis as a cultural being is a focal point of the

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<sup>3</sup> O. Drîmbă, *Istoria culturii și civilizației*, ( Științifică și enciclopedică, Bucureși,1984,) vol.1.,p.6

<sup>4</sup> *Dicționar de filosofie*, (Politică, București, 1978) pp. 116–117, 168–169.

whole system of values that characterizes it, and "the notion of culture always retains a normative sense and is synonymous with humanism."<sup>5</sup>

The philosophical perspective<sup>6</sup> on culture reveals, among other things, the need to use the term plural in terms of diversity of cultures, axiological neutrality - not to appreciate or condemn cultures in the light of our values, to distinguish between use in a first global sense the term of culture - as a totality of man's life towards nature and particular perceptions - cultural life, youth culture, pop culture, culture's critique that belongs to culture, and so on. The philosophy of culture relates to three conceptual couples: culture / nature, - which highlights what is not done by man and escapes his / her encompassment, culture / civilization, - which relates to aspects of culture, to technical-industrial urbanization (Kant's morality is the specific difference between culture and civilization), culture / life - a totality of background that includes both culture and civilization.

Culture, as author Mark van Hoecke<sup>7</sup> notes, refers to all the traditions, concepts, values, principles, ideologies and perspectives of the world that govern a society or certain groups of that professionally structured society. In correlation with law, the legal culture, in a narrow sense, is configured as a professional culture of lawyers, and in a broad sense, as an external culture of the specialized professional group, evoking the conception about justice, justice, legal institutions existing in that society. Legal culture in the most general sense evokes the relatively stable legal patterns that guide social behavior and attitudes in a society. The core of every legal culture - its basic paradigm - contains the essential points of view on the concept of law, the sources of law, the methodology of law, the legitimacy of law, more generally common values and a certain perspective on the world. The relationships between different legal cultures are evolving in terms of conflict and harmonization, being always in the making.

### III. THEORETICAL COORDINATES OF TRANSDISCIPLINARITY

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<sup>5</sup> Larousse, *Dicționar de filosofie*, trans. (Univers Enciclopedic, București, 1999) p. 68.

<sup>6</sup> Schnadelbach, H.; Martens E. (editori) *Filosofie*, trans. (Științifică, București, 1999) pp.405-435

<sup>7</sup> M. Van Hoecke, *Law as communication*, (Hart Publishing, Oxford, Portland, Oregon, 2002), pp.56-58

Transdisciplinarity<sup>8</sup> is a term introduced by Jean Piaget, a well-known philosopher and Swiss psychologist, in 1970, the term being invoked by Edgar Morin and Erich Jantsch.

Basarab Nicolescu,<sup>9</sup> a Romanian author developed this idea, drawing new dimensions. A Transdisciplinarity Charter was adopted - 14 articles- at the First World Congress of Transdisciplinarity (Portugal, 1994)

Talking about differences and nuances, take the term transdisciplinarity and look at the prefix trans.

It refers both to what lies within disciplines, between disciplines and beyond. A beyond, for instance, asking about the interface between poetry, science and metaphysics.

Transdisciplinarity is not holism, says Basarab Nicolescu. Holism emphasizes only on unity, as if an ocean would exist without fish or without the water droplets that make up the ocean.

What transdisciplinarity brings to the field of knowledge is the idea that we can treat the whole and the parts at the same time.

At the same time unity through diversity, and at the same time diversity through unity. Do not forget to look at each other. Things are different because there is unity, but unity can only exist in diversity.

According to Basarab Nicolescu's expression, the bow of knowledge has four arrows - discipline, pluridisciplinarity, interdisciplinarity, transdisciplinarity.

Here are some coordinates needed to understand this vision:

- The level of reality - a structure of invariants with a specific physiognomy, expressed in the plane of knowledge through fundamental concepts and specific principles. Moving from one level to another one there is a structure, the laws changing radically. A level of reality is self-destructive if it is separate from the other. The things are distinct, but not separate. The contradictory of the levels may be complementary (the new epistemology of the Bohr- unity between facets that seem irreconcilable).
- Every level of reality is what it is because it exists simultaneously with the other levels of reality (existential solidarity!). They are not privileged. There may be finite or infinite levels

<sup>8</sup> See, eg *Transdisciplinarity – Theory and Practice* (Ed.), Hampton Press, Cresskill, NJ, USA, 2008.

<sup>9</sup> See, B. Nicolescu, *Transdisciplinaritatea* (manifest), trans. Horia Vasilescu (Polirom, Iași, 1999)

that prolong with a non-resilient area - we can not capture knowledge of an area of the sacred, transcendental. Hence, the impossibility of building a complete theory of levels (Goedel).

- Switching from one level to another one is done using the logic of the included third party. A logic of complexity that does not suppress - the principle of the third party is excluded from the formal logic, but narrows it to simpler situations. Thus, it ensures the emergence of a new type of integration - the information integration.

- The structure of reality levels, together with its resistance area, forms the transdisciplinary object.

- In correspondence with the reality levels of the transdisciplinary object, there are the levels of perception of the observer subject by means of which the levels of reality are accessible to human knowledge. Knowing the structure of perceptual levels, there are also mandatory areas of non-resistance to perception.

- The levels of perception - the flow of consciousness - together with the area of resistance form the transdisciplinary subject. For a possible communication between the transdisciplinary subject and the transdisciplinary object, the nonresistance areas of the object and the subject must be identical (isomorphism). Information flow loops crossing the levels consistently meet the consciousness flows with the 3rd transdisciplinary knowledge term – interaction- that can not be reduced either to the subject or to the subject.

In this ternary division - Object-Subject-Interaction, knowledge is concomitantly internal and external, the study of the universe and the human being becoming reciprocal. Therefore it is proposed to study the "concrete universes."

#### IV THE PERSPECTIVE OF TRANSDISCIPLINARITY ON LEGAL CULTURE

The following items can be vectors of transdisciplinary knowledge in the field of legal culture, or at least ideas:

- Reality-what we can capture through knowledge does not have a homogeneous structure. We can distinguish levels of reality.

- Level is a specific invariant structure, expressed in the knowledge plane through fundamental concepts and specific principles. From one level to another, things change radically. A level of reality is self-destructing if it is separate from the others. The contradictory level can be complementary. Every level of reality is not privileged and exists simultaneously with the other levels. There may be n number levels.
- The transition from one level to another is done by the logic of the third party included. This ensures the emergence of a new type of integration - information integration.
- The structure of reality levels, together with its resistance area, forms the transdisciplinary object. The area of resistance is an extension of levels where we can no longer grasp knowledge (sacred, transcendental).
- The transdisciplinary subject consists of the levels of perception-the flow of consciousness-along with the resistance area.
- The third term of transdisciplinary knowledge is interaction. It can not be reduced either to the subject or to the object that is indistinguishable.
- Knowledge is both internal and external, the study of the universe and the human being supporting each other.
- Exceeding the limited approach to knowledge through knowledge in disciplines, between disciplines and beyond.

We are moving for our considerations from an encyclopaedic platform to the traditional understanding of legal culture. Thus, a known encyclopaedic dictionary<sup>10</sup> retains and analyzes 4 cardinal meanings regarding the term of legal culture:

1. A set of specific techniques for the elaboration, interpretation and realization of the law by the juridical agents and the ideation adjacent to these techniques, being confined mainly to the technical culture in law.
2. A set of opinions and appreciations of the public about the positive law and the legal systems in force at a given moment, revealing the broad meaning of the legal culture.
3. A set of values, principles and ideologies related to law and knowledge related to the vocabulary of the legal professions - the professional culture of lawyers.

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<sup>10</sup> A.J. Arnaud , *Dictionnaire encyclopedique de theorie et du sociologie du droit* ,( L.G.D.J.,Paris,1993),pp. 139-142

4. A set of national and local differences in legal thinking and practice. This determines the place of legal culture within a cultural system and the differences between cultures, configuring the comparative perspective.

If we consider at least the limitation of the levels of knowledge of the legal culture and the structure specific to each level of reality, the scientific investigation of this concept can be achieved taking into account the levels:

- The level of the technical culture, primary law, understood as a social-normative technique, susceptible of public constraint, materialized in methods, means, procedures for elaboration of normative legal acts, legal interpretation, legal decision making and application specific sanctions - legal sanctions.
- The level of specialized legal knowledge, inherited from the profession of lawyer, with sub-levels involved in legal professions, branches of law and legal institutions.
- The level of concepts and those of founders of legality such as order, power, legitimacy, freedom, coercion, norm, sanction, justice, etc.
- The level set up by the concepts of justice and justice in a given society
- The level of the founding concepts of humanity as - society, man, thinking, knowledge, consciousness, value, norm, communication, action, etc. deeply involved in any legal fact.
- The philosophical level of human understanding and the meaning of life expressed by philosophy of *perennis-philosophy* that has proven its persistence and value in historical time
- From a transdisciplinary perspective, the solidarity of these levels, their interference due to the logic of the included third party, must be taken into account. Thus, the level of legal technique includes professional culture and crystallizes philosophical and social conceptions. It is possible to observe specific elements, differentiation and contradiction, but also their complementarity. Legal knowledge is concurrently internal - it belongs to jurists - but at the same time it is external, being included in the social conceptions of law and justice and in the philosophical understanding of the world.

These levels communicate, are interdependent, know interference and dialectical passages.

The transdisciplinary approach also allows, through the logic of the included third party, the emergence of an informational flow that goes through all levels, the clearer configuration of



some dimensions, some traditional, but in their solidarity perspective, components of a unitary information flow. So we could explore the following dimensions:

- Ontological - in any human society there exists as a subsystem the culture, together with the economic, organizational, political subsystem of the human community form.
- Gnoseological - since any culture involves the act of knowledge, which in time leads to value.
- Axiological - given that culture, by excellence, is spirituality, an ensemble of values
- Praxiological - culture impregnates social action and gives it a certain specificity, civilization being a culture in action as well as a prominent expression of technological culture.
- Teleology - implying a sense, purpose, culture being creative and protective of humanity.

## V. CONCLUDING REMARKS

The transdisciplinary approach offers an extra chance for understanding the legal culture as a complex and integrative concept with multiple dimensions and multi-level, open to other acquisitions, inspiring similar approaches with a positive and major social impact.

The finality of transdisciplinarity as an understanding of human unity reveals more prominently that homo juridicus - and the legal culture in its historical becoming attests this - can not be ideally but an integrative being, collecting and capitalizing on the experience of the human being in science, art, religion , philosophy.

