

**“The sun will shine only on free men”
“Le soleil n'éclairera plus sur la terre que des hommes
libres” (Condorcet)**

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Abstract:

Freedom is inseparable from the knowledge of the laws. This is an idea that the article seeks to develop, showing the development of legal concepts during the modern era. A decisive factor for knowing and complying with legal laws is the education level within a social space. Social inequalities can be reduced only through knowledge and recognition of the rights and liberties of every social subject. Punishment balances the presence of justice in the relations between citizens. In the Romanian medieval legal language stands a proper term, that of common law. It deserves clarification in order to be distinguished from the legal norm and to trace its presence in the collective mind.

Key words: *freedom, laws, justice, common law, norm.*

“The world” described by Condorcet seems to be the same picture that unfolds under our very eyes, those of us who are experiencing the beginning of the third millennium. Information circulates everywhere, the power of technology reaches beyond the understanding of its user and the whole world show is the one described by Marquis Jean-Antoine-Nicolas de Caritat at the late eighteenth century: inequality, poor and rich nations, the need for freedom and liberation from domination, the development of new constitutions that can manage the new state configurations, the need to improve man in order to face new challenges. This is the world map of Condorcet and the map of our own world, a conjunction which proves that “the eternal human” wants rights, freedoms, the power to master comprising nations and sacrificing the individual. The individual sacrifice stands in the assumed freedom of the word, in the gesture of protecting the other, in the gesture of being happy. Despite so many institutions with a protective role, fear and uncertainty seem more present than ever. Freedom requires sacrifice and protectionist state intervention reduces liberties, offering public disclosure. Only the state can guarantee safety through the punitive force of laws. The purpose of law is to order society. The giving over of the natural human force (Rousseau) to a system ensuring the equality and freedom of all represents the purpose of rights and of justice for the state organization. The organization of social life requires a certain form of state organization; each social individual is subordinated to the entire society. Legal

security means giving up the “total” freedom with the inclusion of a “portion” of freedom in the social contract. “We live in a time when, in the end, there is nothing that makes you wonder” [1]. It is a conclusion showing the relationship between liberty and security nowadays. You can not be absolutely free as long as you accept the juridical order to regulate and sanction, through specialized institutions, the violation of the laws and legal norms. The wonder occurs only when you assume the legal order for the achievement of a social project accepted by most community members.

A century before Condorcet, Thomas Hobbes distinguishes between *jus* and *lex*: “the right consists in the freedom of doing or not doing, whereas the law determines and compels to one of them, so that law and right are as different as obligation and freedom, which are incompatible when applied to one and the same thing” [2]. In this sense, the father of liberalism develops the concept of renouncing a right: “To deprive yourself of the right over one thing means to deprive yourself of the freedom to prevent another from benefiting from their own right over the same thing” [3]. As we can see, assuming certain obligations implies the diminishing of freedoms which may differ depending on the restrictions provided by laws. Everything that violates human rights and freedoms, as Kant reminded us, “intends to use other persons only as a means, without considering that they should be respected as rational beings always, at the same time, as ends therefore having to contain in them the purpose of the same action” [4]. Kant’s idea, that man can not be someone’s means, is based on the fact that men are not things, thus they cannot be someone’s means, “but must in all his actions be always considered as an end in himself”. It seems that this status of the human being, of the being seen as an end in itself, no longer works in modern times. Man becomes a means of power to someone else, that content of justice which Robert Musil takes from a psychiatric textbook in the content of his treatise *On stupidity* [5], namely “the punishment of the other”. Giving a punishment means, paradoxically, maintaining the social freedom. Punishment is no more than the price paid for the abuse assumed by the violation of common rights. More than two hundred years ago, the issue of civil rights and freedoms represented a priority, leaving a secondary role to ancient reason. Condorcet develops a comprehensive work “*Esquisse d’un tableau historique des l’esprit humain progressive*” (1793-1794), which analyzes aspects related to the evolution of the human spirit from its origins to the appearance of the first forms of organization and

progress social, *“l'esprit humain progressive dance in Greece, the division jusqu'au temps des sciences, verse siècle d'Alexandre them”*. *“Progress depuis leur des sciences division jusqu'à leur decadence”*. We will highlight, following Condorcet's analysis, the main elements that encourage the affirmation of the human spirit in the history of its manifestation. The reason of the approach is based on the ever-present approach of the scientist and philosopher Condorcet, who crossed a complex field of concerns, from mathematical analysis and calculus of probability, continuing with innovative ideas in business administration and economics, not overlooking the effort aimed to support civil rights and liberties, efforts that have resulted in a Constitution which he supported until the coming of the Jacobins to power.

We start by analyzing what Condorcet called “the human space”, with all the features necessary for social life. He argued for the need of equality among the peoples of the world, among the members of the same people, claiming the actual human perfection.

“Nos espérances sur l'état à venir de l'espèce humaine peuvent se réduire à ces trois points importants: la destruction de l'inégalité entre les nations; les progrès de l'égalité dans un même peuple; enfin, le perfectionnement réel de l'homme.” [6]

To describe the image of a perfected society Condorcet used the symbolic image of the sun, which reminds us of Plato's myth of the cave where the sun was the truth that tore the shadows off the eyes of viewers. In his optimism, he considered quite close the moment when the sun would shine only on free people who would recognize reason as the only master; where tyranny and slavery would become history or theater plays, where no one would find themselves as victims; when the barriers of reason would be acknowledged, superstition and tyranny would not appear ever again. These are utopian ideas that no political program managed to achieve.

“Il arrivera donc, ce moment où le soleil n'éclairera plus sur la terre que des hommes libres, ne reconnaissant d'autre maître que leur raison; où les tyrans et les esclaves, les prêtres et leurs stupides ou hypocrites instruments n'existeront plus que dans l'histoire et sur les théâtres; où l'on ne s'en occupera plus que pour plaindre leurs victimes et leurs dupes; pour s'entretenir, par l'horreur de leurs excès, dans une utile vigilance; pour savoir reconnaître et étouffer, sous le poids de la raison, les premiers germes de la superstition. Et de la tyrannie, si jamais ils osaient reparaître!”

[7]

Focusing on the history of societies, Condorcet notes that there is no big difference between the rights the law recognizes citizens and the rights they actually enjoy; that the equality established by political institutions is not removed by the equality of individuals; that the difference stands between *“the main causes of destructuring freedom in the ancient republics, the storms which had shaken them, the weaknesses brought by foreign tyrants”*. The analysis brings forth the causes of inequality and destruction of the old republics, identified in the *“inequality in wealth, inequality in status between the man whose means of subsistence are hereditary and the man whose means are dependent on the length of his life, or, rather, on that part of his life in which he is capable of work; and, finally, inequality in education”*. But removing the source of inequality may “harm” the rights and freedoms of the people. If we follow the analysis of wealth inequality, we observe the Hegelian ideas of the relationship between master and servant, where there are mutual dependencies; one can not exist without the other. At the same time, Condorcet highlights that there are several causes that may determine more profound inequalities, which reinforces the idea that they can not disappear without unpredictable effects.

“En parcourant l'histoire des sociétés, nous aurons eu l'occasion de faire voir que souvent il existe un grand intervalle entre les droits que la loi reconnaît dans les citoyens et les droits dont ils ont une jouissance réelle; entre l'égalité qui est établie par les institutions politiques et celle qui existe entre les individus: nous aurons fait remarquer que cette différence a été une des principales causes de la destruction de la liberté dans les républiques anciennes, des orages qui les ont troublées, de la faiblesse qui les a livrées à des tyrans étrangers. Ces différences ont trois causes principales: l'inégalité de richesse, l'inégalité d'état entre celui dont les moyens de subsistance assurée pour lui-même se transmettent à sa famille, et celui pour qui ces moyens sont dépendants de la durée de sa vie, ou plutôt de la partie de sa vie où il est capable de travail; enfin, l'inégalité d'instruction. Il faudra donc montrer que ces trois espèces d'inégalité réelle doivent diminuer continuellement, sans pourtant s'anéantir; car elles ont des causes naturelles et nécessaires, qu'il serait absurde et dangereux de vouloir détruire; et l'on ne pourrait même tenter d'en faire disparaître entièrement les effets, sans ouvrir des sources d'inégalité plus fécondes, sans porter aux droits des hommes des atteintes plus directes et plus funestes”. [8]

Education plays an important role on the human condition. Only through knowledge people can be free, know their rights and eliminate prejudices by the force

of reason. Education represents the means of rescuing health, freedom, opinions and individual conscience.

“On peut instruire la masse entière d'un peuple de tout ce que chaque homme a besoin de savoir pour l'économie domestique, pour l'administration de ses affaires, pour le libre développement de son industrie et de ses facultés ; pour connaître ses droits, les défendre et les exercer; pour être instruit de ses devoirs, pour pouvoir les bien remplir; pour juger ses actions et celles des autres, d'après ses propres lumières, et n'être étranger à aucun des sentiments élevés ou délicats qui honorent la nature humaine; pour ne point dépendre aveuglément de ceux à qui il est obligé de confier le soin de ses affaires ou l'exercice de ses droits, pour être en état de les choisir et de les surveiller, pour n'être plus la dupe de ces erreurs populaires qui tourmentent la vie de craintes superstitieuses et d'espérances chimériques ; pour se défendre contre les préjugés avec les seules forces de sa raison; enfin, pour échapper aux prestiges du charlatanisme, qui tendrait des pièges à sa fortune, à sa santé, à la liberté de ses opinions et de sa conscience, sous prétexte de l'enrichir, de le guérir et de le sauver.” [9]

Education is the decisive factor for correcting natural inequalities, as laws “remedy the means of sustenance; just as institutions bring equality, coordinated by the constitution, which eliminates the savage state”. Art fulfils its purpose socially, that of providing the joy of common rights. *“L'instruction bien dirigée corrige l'inégalité naturelle des facultés, au lieu de la fortifier, comme les bonnes lois remédient à l'inégalité naturelle des moyens de subsistance ; comme dans les sociétés où les institutions auront amené cette égalité, la liberté, quoique soumise à une constitution régulière, sera plus étendue, plus entière que dans l'indépendance de la vie sauvage. Alors, l'art social a rempli son but, celui d'assurer et d'étendre pont tous la jouissance des droits communs, auxquels ils sont appelés par la nature.” [10]*

Education remains the universal right of every state, ensuring basic knowledge for a large number of people, enabling them to handle their activities, “and a fifth of them to exercise their talents in various fields”.

“Nous ferons remarquer comment une instruction plus universelle dans chaque pays, en donnant à un plus grand nombre d'hommes les connaissances élémentaires qui peuvent leur inspirer, et le goût d'un genre d'étude, et la facilité d'y faire des progrès, doit ajouter à ces espérances; combien elles augmentent encore, si une aisance plus générale permet à plus d'individus de se livrer à ces occupations,

puisque en effet à peine, dans les pays les plus éclairés, la cinquantième partie de ceux à qui la nature a donné des talents reçoivent l'instruction nécessaire pour les développer; et qu'ainsi le nombre des hommes destinés à reculer les bornes des sciences par leurs découvertes devrait alors s'accroître dans cette même proportion.”

[11]

As observed, Condorcet assigns education a primary role in the free-consented manifestation of every citizen, contributing to the overall progress of each country. Therefore, instruction facilitates knowledge of the duties in each field of activity and objectifies the area of responsibility present in each social subject. Intellectual faculties are related to the moral values and norms. The good-evil polarity is a binomial expression of the degree of understanding and assuming facts. Condorcet claims that few people are aware of their duties in the societies in which they are members; *“that questions remain regarding social relations, the area of action of individual rights, the social status of each”*.

“Mais il est aisé de voir combien l'analyse des facultés intellectuelles et morales de l'homme est encore imparfaite; combien la connaissance de ses devoirs, qui suppose celle de l'influence de ses actions sur le bien-être de ses semblables, sur la société dont il est membre, peut s'étendre encore par une observation plus fixe, plus approfondie, plus précise de cette influence; combien il reste de questions à résoudre, de rapports sociaux à examiner, pour connaître avec exactitude l'étendue des droits individuels de l'homme, et de ceux que l'état social donne à tous à l'égard de chacun!” [12]

Condorcet focuses on the moral aspect of human behavior, showing that moral norms are important in human manifestation, regardless of the activity or life situation experienced. The influence of moral norms on the progress of society resembles the one offered by practical sciences.

“Les hommes ne pourront s'éclairer sur la nature et le développement de leurs sentiments moraux, sur les principes de la morale, sur les motifs naturels d'y conformer leurs actions, sur leurs intérêts, soit comme individus, soit comme membres d'une société, sans faire aussi dans la morale pratique des progrès non moins réels que ceux de la science même.” [13]

The greatest inequality between people is due to prejudices, those barriers which condition a certain understanding of each life event or situation and which

hinder, to the point of blocking, the progress in every area of social life. A prejudice with immediate effects is the one between genders.

“Parmi les progrès de l'esprit humain les plus importants pour le bonheur général, nous devons compter l'entière destruction des préjugés, qui ont établi entre les deux sexes une inégalité de droits funeste à celui même qu'elle favorise. On chercherait en vain des motifs de la justifier par les différences de leur organisation physique, par celle qu'on voudrait trouver dans la force de leur intelligence, dans leur sensibilité morale. Cette inégalité n'a eu d'autre origine que l'abus de la force, et c'est vainement qu'on a essayé depuis de l'excuser par des sophismes.” [14]

While Condorcet was fighting for rights and freedoms between genders, ethnicities, black and Hebrew, in the Romanian country several measures initiated by the Byzantine legislation were emerging. A work with implications on the Romanian legal life is *Pravilniceasca condică*, a collection of laws developed under the reign of Alexander Ipsilanti for the Romanian Country, published and put into force in 1780, inspired by Michael Fotino's legal textbooks, collected from the extensive legislation of the Byzantine Empire, alongside the local common law and the royal legislative initiatives, visible in the case law of central and local courts. The reforms comprised in the book aim at measures designed to ease the situation of the main contributors, peasants. For this social category, Prince Ipsilanti imposed fixed, regular taxes, together with measures improving the agricultural activity. These regulations had the role of encouraging a new culture. To fill labor shortages, the legislative measures had encouraged the immigration Transylvanian Romanians (“ungureni/Transylvanian”). In the historical heritage, keeping archives had an important role, together with the registration of all chronicles kept by setting up “logofeția de obiceiuri/the officers of customs”. At economic level, the legislative measures encouraged the development of manufactures and the emergence of glass, cloth, paper, etc “factories”. Some measures included in the legal act were done to promote and protect local merchants.

As a conclusion, we intend to highlight some terms specific to the Romanian medieval legal language, which prove the legal organization of the Romanian Country, under the influence of the Byzantine law. The terms that define the complementarity of the Romanian medieval legal act are common law, perceived Byzantine law and royal legislative initiative. Common law is a term that has been revealed from the perspective of the Romanian-Ottoman relations or at popular level

by the folklore perception of the idea of law and justice. It is a term that retains its actuality in the Romanian social mindset. The Byzantine Rule and its penetration channels lie at the north of the Danube; it aimed to influence the legislative and institutional strengthening of the Romanian medieval state. As for the royal law (“*ius novum*”), the report and positioning of the royal legislation initiative to codex and customs were followed; cases, eloquent cases, cases pertaining to the church (the founder), civil, criminal, family law. Hence appeared the term “eritocrisia” in legal proceedings.

Perhaps our incursion will offer answers to questions or concerns about the legal status of current Romania, a series of legislative changes being difficult to include in the dynamics of economic, political or cultural relations. The development of new criminal and civil codes represents the result of European requirements in the Romanian common law, respecting their perception from the perspective of the notion of law and justice. The market of legal ideas suffers from a lack appropriate education, the education claimed by Condorcet for the free consented manifestation. We revisit the idea supported by Condorcet, according to which education plays the same role as the institutions that bring equality, and, coordinated by the constitution, eliminates the savage state.

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