

Historical Prolegomena to the Sociology of Law in Greater Romania

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THE KNOWLEDGE of the historical roots of the Romanian Sociology of Law is a matter of considerable significance that is fully deserving of our attention and recognition. With only one exception,¹ scarcely anyone in present-day Romania—including established and widely respected scholars—is aware that the Gusti School conducted the first field research in the Sociology of Law during the interwar period.² The earliest rural investigations into ethical-legal manifestations in Greater Romania were conducted by the Sociological School of Bucharest.³ Undoubtedly, the Romanian Sociology of Law—as an academic practice and field of original scientific contribution—was founded by the first and only Romanian School of Sociology, led by Professor and Academician Dimitrie Gusti.⁴ Therefore, this work aims to academically assert and validate a truth that is nearly unknown, yet undeniable: the ethical-legal manifestations of the Romanian society (a denomination found in the Gustian Sociological Methodology) were researched for the first time in the interwar period by the Sociological School of Bucharest.⁵ And, since this topic, which played an exceptionally important part in the emergence of Romanian the Sociology of Law, has only been indirectly and tangentially addressed in my publications (including my latest book), I intend to give it the attention and significance it rightfully deserves in this article.⁶ Consequently, I have brought together all the major studies (published and unpublished) conducted by the Gusti School covering the Sociology of Law.

Traditional Justice and Customary Law

EXAMINING THE ethical-legal manifestations of Romanian villages which were sociologically investigated by the Gusti School during the interwar period, the monographers were greatly surprised to note the deep regret of the rural population for the traditional justice system.⁷ The old customary law—although having become legally obsolete for over half a century—was still widely seen as efficient, effective, immediate, with local application and delivering swift resolutions.⁸ This was because the old judicial

procedure was, in most cases, simple, and trials generally ended quickly and fairly.⁹ There is evidence of cases from the early 19th century in which, within the span of six months, a land boundary dispute was heard on the merits (at the local level, by the *good people and elders* in the free villages, respectively by the owner of the estate in the serf villages), on appeal (at the territorial level, by the county steward), and then on second appeal (at the central level, by the princely council), after which the sentence was passed. Naturally, the judicial system had instances of overreaching, abuses¹⁰ and shortcomings.¹¹ For example, in the Danubian Principalities, the principle of *res judicata* did not apply, and the lawsuits could be reopened with each new ruling prince.¹²

The elder Gheorghe Râlea from the Vrancea village of Nereju, interviewed in 1927 by monographers, briefly outlines the main judicial virtues and political advantages of the Moldavian-Wallachian customary law (which corresponded to the level of development of the Romanian society even in the interwar period). Thus, in earlier times, the punishment for those proven to have committed wrongdoings consisted in having them tied to a log in the churchyard and whipping their backs. The judicial system, at least in the rural areas, operated without costs (tying the wrongdoer to a log and whipping his back implied no costs for the community) and efficiently (the immense social pressure felt by the sanctioned persons made them feel ashamed of their deeds). The punishment was administered swiftly after the offense was committed, and the investigation conducted by the priest and the steward (*vornic*) was generally perceived as fair and expedient. So, the trust in the old Moldavian-Wallachian institutions of social control—in particular, the church and the village community—manifested by the elderly people from the interwar period was very high.¹³ The high level of trust that Gheorghe Râlea shows towards the way in which loans, in ancient times, were given sometimes in the middle of the night, without witnesses, is telling.¹⁴ Thus, by virtue of the customs of the land—and as an homage to the former customary legal system—the mayor continued to informally exercise the ancient powers of the *good people and elders* as a court of first instance in some communes of the interwar period.¹⁵

Modern Justice and European Law

IN CONTRAST to the old traditional judicial system which is invoked and praised, as we could see, by the elders of the interwar villages who were interviewed, the modern judicial system was perceived as inefficient and permissive in relation to wrongdoing, as it did not have the ability to carry out the essential purpose of quickly and correctly sanctioning deviant behaviors.¹⁶ Furthermore, modern justice and European legislation were generally perceived by the rural population as foreign bodies superimposed over ancient Romanian customs and legal norms.¹⁷

Generally, given the modest possibilities of the rural population, the functioning of the modern justice system in Greater Romania was unintelligible (the legal norms in Greater Romania were too complex and could not be understood by a predominantly illiterate peasantry¹⁸), inaccessible (judicial courts were predominantly urban for a predominantly rural population¹⁹), slow (proceedings settlement speed), cumbersome (procedural point

of view), complex (administrative point of view), and costly (financial point of view). The civil and criminal cases, even the simplest ones (involving an offense, insult, assault), lasted too many years: for more serious or complex criminal offenses even up to 10 years.²⁰ Trial deadlines were too long and perpetually extended (under various legal pretexts). Court decisions were open to too many avenues for appeal: four ordinary²¹ and four extraordinary,²² which meant that a complaint could be heard up to eight times. Taking all of this into account, without even mentioning the appeals to the enforcement of final sentences (three levels of jurisdiction: first instance, appeal, second appeal) or the main action in common law (which could, in certain cases, lead to a retrial, with the full resumption of the previously mentioned appeals). Procedural formalities were too numerous and too complex. Cases were initiated or conducted by individuals who were often professionally incompetent. Therefore, judicial sanctions were, in general, absolutely ineffective, to the despair of litigants. The sentences pronounced by the courts were almost always very lenient. Often, court decisions could only be enforced with difficulty. There was an ever-increasing number of perpetually lying witnesses (against whom measures were almost never taken). Too few courts were operating (weighed against the number of complaints brought before them). Those that were operating had too few judges.²³ Auxiliary staff (clerks, copyists) was also insufficient and, frequently, poorly trained.²⁴

Peasant Legal Mentality

THE REALITY is that legal provisions were applied inconsistently and arbitrarily in Greater Romania. All repeated and persistent demands from the rural population to remedy the situation were in vain. The petitions addressed to the Government in Bucharest and even parliamentary interpellations (made by deputies belonging to the ruling parties) proved ineffective. The outcome was a total lack of trust in the institutions of the Romanian state, including in the judicial system, which lacked the capacity to correct the errors of the political-administrative apparatus. Therefore, the perception of an unchecked rise in crime rates compared to previous times was consolidated.²⁵ Hence the Romanians' regret for the traditional institutions of the feudal period.²⁶ A legal theme that draws attention during the interwar period is the seemingly insurmountable conflict between the provisions of modern legislation and the traditional behavior of people, especially in rural areas. There were recently enacted provisions, introduced through European-style legislation, that far exceeded the legal comprehension of Romania's rural population. For instance, a verbal will made with witnesses was valid according to an old custom. Also, substantial parts of one's fortune could be irrevocably entrusted through verbal disposition, with witnesses. However, the new legal provisions required written acts for these to be valid, which generated—in a predominantly illiterate society—uncertainties regarding property rights, terrible social anxieties, and intense political frustration. Consequently, a state of legal insecurity prevailed, especially concerning the state's recognition, protection, and guarantee of private land ownership rights. Thus, in the context of these permanent land redistributions, agricultural techniques generally remained primitive for those times.²⁷

Scientifically spectacular was the initiative to apply a questionnaire regarding the legal customs of Romanians in Belinț, a village in Banat, Timiș-Torontal County. The sociological research conducted in 1934 on the ethical-legal mentality of the Banat peasants has endured as a memorable contribution. The negative remarks of the locals concerning the flawed administration of justice in interwar Romania became proverbial: *Better a crooked reconciliation than a straight judgment*²⁸; *He who has money wins, while the one who is right does not prevail*; *We labor in vain, for everything is stolen by the politicians*; *The powerful steal and go unpunished*; *The politicians are to blame*; *Justice has died for the nation*; *Only God can still deliver justice*. These disparaging expressions reflect a profound sense of doubt among the peasants of Banat regarding the judicial²⁹ and constitutional³⁰ system of interwar Romania.

Proposals and Recommendations from a Sociology of Law Perspective to Address the Dysfunctionalities

THE ENTRY into force of European-influenced legal codes—beginning with the reformist reign of Alexandru Ioan Cuza—marked, primarily, the prohibition of inhumane and degrading treatment, and the abandonment of traditional Romanian customs and judicial practices rooted in corporal punishment, characteristic of feudal society.³¹ However, practical reality overcame the legislator's noble intention: the chronic inefficiency of the judicial system in controlling the criminal phenomena—in all their manifestations (common law crimes and political offenses)—was so obvious in the modern period that even magistrates from the High Court of Cassation and Justice, with nationally recognized professional prestige, spoke out after the Great Union regarding the reintroduction of beating, as corporal punishment, into our criminal legislation.³² Although they were aware that corporal punishments are degrading and humiliating for human dignity, nevertheless, the old criminal practice from Romanian rural medieval times—tying to a log and whipping the backs of criminals (which was invoked for efficiency by the peasants investigated during the interwar period by the Sociological School of Bucharest)—came to be considered the only truly intimidating punishment for wrongdoers, since all the other sanctions provided by the modern Criminal Code seemed very light or difficult to apply (due to endless judicial procedures). Without falling into the other extreme of advocating beating as a form of moral reparation and criminal sanction, it was specified that in Romanian customary law tying to a log and whipping the backs of offenders did not represent forms of torture, mistreatment, or barbaric torment, in the criminal sense of practices developed in Western medieval times.³³ In the rural areas, this action usually took place on Sunday, in the churchyard, after church service, with the community members present, to instill shame in the offender and publicly sanction a wrongdoing. Judgment belonged to the *community council of good people and elders* (in free villages), and the implementation of the sentence was done with the consent of the priest and the deputy district prefect (*zapciu de plasă*). The mere re-examination of such subjects by magistrates during the interwar period shows how inefficient and corrupt was modern Romanian judicial practice.

To remedy this, several proposals were formulated with the intention of bringing the litigant—predominantly from rural areas—closer to modern judicial practice. There were several proposals to achieve this goal: reducing judicial fees (lower costs in pursuing a trial), shortening the travel distance to the courthouse for rural litigants (establishing new courts and more judges), enhancing the role of the judge as a judicial police officer (empowered to gather evidence, including on-site), and simplifying judicial procedures. To limit the reasons for initiating lawsuits regarding property rights over agricultural lands, the introduction of property registers and a cadastral system were considered necessary, as these already existed in the Romanian territories under the Austro-Hungarian rule until 1918. To better accommodate the needs of the villagers, but at the same time remain efficient and accessible to the mentality, social status, and lack of education of Romanians in rural areas, an increase in the number of district courts was proposed. In large counties, where villagers had to travel enormous distances, sometimes even over 100 km to the nearest courthouse, it became necessary to install additional specialized subsidiary courts in smaller towns as part of the main county tribunal, according to the local needs. Moreover, the interpretation and application of laws had to be conducted with greater sensitivity to rural life. Legal culture, legal education, and the dissemination of legal knowledge in rural areas about the organization of legal and administrative life in Romania were absolute necessities of the interwar period. The promulgation of new laws by the head of state and their publication in the Official Journal were not enough to ensure that the content of these legal acts was known in rural communities. Even less so could this guarantee their observance or practical implementation. Thus, it was considered appropriate for new laws passed by Parliament to be posted in several places within each commune and read or explained by village intellectuals—such as notaries, teachers, or priests—or by other designated individuals, in each locality, during village assemblies.³⁴



Notes

1. One author foresaw the potential of the Romanian Sociology of Law that lay within the field research carried out in the villages of Greater Romania by the Sociological School of Bucharest. His textbook on the Sociology of Law suggestively featured the motto (taken from Mircea I. Manolescu): “Professor D. Gusti’s sociological system and the monographic method represent a significant contribution and a scientific and methodological foundation for the establishment and development of the Sociology of Law” (I. Vlăduț, *Sociologia juridică în opera lui Dimitrie Gusti*, Bucharest: Lumina Lex, 1997, 1).
2. Anyone curious enough to carefully read the academic textbooks on the Romanian Sociology of Law published in the post-communist period will easily notice that an overwhelming majority of them make absolutely no reference to the field research conducted by the Sociological School of Bucharest in Greater Romania: I am referring to the ethical-legal aspects within the Gustian methodology for sociological research of the interwar Romanian villages [S. Popescu, *Sociologie juridică*, Bucharest: Lumina Lex, 2001; I. Vlăduț, *Introducere în sociologia juridică*, Bucharest: Editura Ministerului de Interne (1994) and Bucharest: Lumina Lex (2000); D. Banciu, *Sociologie juridică (ipostaze și funcții sociale ale dreptului)*, Bucharest: Editura Hyperion, 1995; D. Banciu, *Elemente de*

sociologie juridică, Bucharest: Lumina Lex, 2000; N. Popa, I. Mihăilescu, M. Eremia, *Sociologie juridică*, Bucharest: Editura Universității din Bucharest, 2000; M.C.N. Stratone, *Sociologie juridică: elemente de bază*, Bucharest: Editura Hamangiu, 2013; A. Mihăilă, *Sociologia dreptului*, Cluj-Napoca: Sfera Juridică, 2010; M. Voinea, *Sociologie generală și juridică*, Bucharest: Holding Reporter (1997) și Bucharest: Editura Sylvi (2000); V.M. Ciucă, *Lecții de sociologia dreptului: câteva repere în sociologia generală a dreptului*, Iași: Polirom, 1998].

3. In a lecture held on 16 January 1935, in the Legal Ethnography Hall of the Faculty of Law at the Sorbonne University in Paris, Dimitrie Gusti outlined the responsibilities of the legal team related to a monographic study: “*the study of law, criminal offenses and their specific causes, legal life concerning the individual, property and succession, divorce, adoptions, sales, leases, and donations; this team will analyze legal practices, customs, the living law, forms of adaptation to positive law, and the real necessities of social life.*” Moreover, during a conference held at the Romanian Academy on 15 March 1940, Dimitrie Gusti contended that the study of moral-legal manifestations begins with the collection of civil and criminal statistics (regarding property and civil status, court cases, criminal offences and criminality, offenses and misdemeanors). The legal status of the family is also taken into account: marriage, the father’s rights, the status of the women and children, adoptions, the status of illegitimate children, property matters, the right of ownership, rights of use, servitudes, and the transfer of assets through contracts, donations, dowries, and inheritances (I. Vlăduț, *Sociologia juridică în opera lui Dimitrie Gusti*, Bucharest: Lumina Lex, 1997, 246–247).
4. Researching the legal life of peasant communities in interwar Romania, the Sociological School of Bucharest focused on customary law and rural criminality, the observance and disregard of laws, still active legal customs, local adaptations of positive law, and moral-legal manifestations systematized through statistical categories (criminal statistics, property statistics, civil personality statistics, criminality statistics, statistics on the civil status of persons and assets) (P. Selagea, *Sociologie juridică și metodele ei de cercetare: curs teoretico-aplicativ*, Bucharest: Editura Universității Titu Maiorescu, 2003, p. 139).
5. According to the analytical curriculum following the sociology degree examination during the interwar period, at the University of Bucharest, the chapter on the legal activities of society involved studying the following topics: law and morality, legal custom and the social origin of law, the social function of law, the evolution of law, the evolution of the concept of person, the formation of the idea of contract, the idea of property, the sociological issue of crime, the issue of social responsibility, and the issue of punishment [National Archives of Romania, *The Collection of the Royal Cultural Foundation: The Seat (1921–1946)*, inventory no. 697, m. 9/1938, f. 57–58].
6. B. Bucur, *Sociologia proastei guvernări în România interbelică*, Bucharest: Editura RAO, 2019, 468–480.
7. In the pre-modern period, administration of justice operated thusly: legal proceedings were initiated upon the plaintiff’s complaint, hearings were oral and adversarial, the right to defense was guaranteed, the principle of two levels of jurisdiction was upheld, and judgments were issued in written form. Unfortunately, the principle of *res judicata* was ignored [E. Herovanu, “Procedura judiciară,” in D. Gusti, C. Orghidan, M. Vulcănescu, V. Leonte, N.P. Arcadian, D. Botta, C. Enescu (coord.), *Enciclopedia României*, I—*Statul*, Bucharest: Imprimeria Națională, 1938, 409].

8. According to the methodological framework developed by the Sociological School of Bucharest, customary law is conceived as “the law of the nation,” implying the existence “from the depths of history, of a ‘living law’ of each people, which is manifest in the customs and traditions of local communities, and is distinct from state law, statutory law and court rulings.” Dimitrie Gusti saw a contradiction between “the law of written statutes and that emanating from the official courts” (perceived as an arbitrary legal entity) and “the living law of customs and local communities,” which is based on customary law and even popular work—hence also called “customary law,” as it endures “through the necessities dictated by life” (P. Selagea, *Sociologie juridică și metodele ei de cercetare: curs teoretico-aplicativ*, Bucharest: Editura Universității Titu Maiorescu, 2003, 140).
9. In the free villages of Moldavia and Wallachia, manifest justice could not be disregarded, as the good people and elders of the local community judged the less important disputes. Major crimes, such as murders or abductions of girls, were reserved for the princely court. Nevertheless, it was believed that in olden times legal disputes were generally settled quickly, in a rather paternal atmosphere, sometimes with the reconciliation of the parties, other times with immediate punishment, but always with advice that the guilty party was expected to follow. Those who disregarded the law were generally known within the community, and the community usually had the necessary moral or coercive tools to bring them back onto the right path—or at least keep them strictly under control. Thus, a prevailing feeling took shape that in earlier times, public order and the safety of citizens were effectively guaranteed and protected [A. Rădulescu, “Viața juridică și administrativă a satelor,” *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, VII, 1–2, Bucharest: Editura Institutului Social Român, 1927, 33–34; E. Herovanu, “Procedura judiciară,” in D. Gusti, C. Orghidan, M. Vulcănescu, V. Leonte, N.P. Arcadian, D. Botta, C. Enescu (coord.), *Enciclopedia României*, I—*Statul*, Bucharest: Imprimeria Națională, 1938, 409].
10. Undeniably, these trials also saw serious abuses and egregious injustices, including verdicts secured through bribery, yet such cases were rare and were typically limited to disputes with substantial material stakes, in which the involved party was usually a great boyar or someone with influence within the court who could exploit their political influence with the prince of Wallachia or Moldavia.
11. The hardships faced by litigants in the pre-modern period are probably most faithfully embodied in the social depiction of small groups of villagers bearing satchels tied to a stick or wearing saddlebags filled with provisions over their shoulders, setting out on arduous journeys toward the county’s administrative seat or the almighty princely court, carrying with them documents to seek justice and defend their ancestral land in a fair trial—after weeks on muddy roads, followed by additional weeks of waiting their turn in court.
12. Since the mandates of the princes in Bucharest and Iași were extremely short, especially in the Phanariot era—with changes occurring, on average, every two years—there were cases in which the same dispute was heard and reheard six or seven times under as many different princes. Each time, the case was reviewed both on the merits and in appeal (and sometimes even in the second appeal, when applicable). In other words, a lifetime spent in court.
13. Researching the interwar legal life of the Vrancea village of Nereju, one can observe that the village community played a mediation role (for minor disputes between villagers),

- but also that of sanctioning authority (for serious offenses, punishments even harsher than those prescribed by law—such as corporal punishment—were applied) (I. Vlăduț, *Sociologia juridică în opera lui Dimitrie Gusti*, Bucharest: Lumina Lex, 1997, 250).
14. In 1927, the elder Gheorghe Râlea from the village of Nereju, in the former Putna County (now Vrancea), nostalgically told the monographers about the customary judicial order of ancient times: in general, there were few legal disputes, and punishments for wrongdoers consisted of public shaming, admonishment by the priest, banning from the church for set periods of time, being tied to a log in the churchyard, and being whipped on the back by the steward (*vornic*) of the Vrancea Region. In contrast, the modern justice administered by professionals in urban courts was seen as inefficient and inaccessible to the average villager (P.H. Stahl, *Cum s-a stins Țara Vrancei: Nereju—sat din Vrancea*, Bucharest: Paideia, 2002, 68–69).
 15. From the conversations in 1935 between the local population and Sebastian Popescu—a law student at the University of Bucharest and member of the Royal Student Team in Goicea Mare, Dolj County—it emerged that “in addition to the responsibilities granted by the law, in this commune the mayor often acts as the first judicial instance” [National Archives of Romania, *The Collection of the Royal Cultural Foundation: The Seat (1921–1946)*, inventory no. 697, m. 24/1935, f. 205v]. In the Hărăoia hamlet, Neamț County, on 5 May 1939, the illiterate 80-year-old old Catrina, known as Cioncu, widow of Ilie Ivan, told monographer Maria Moisil that in the past, even though people were not well-educated, the mayor dispensed justice, there were few court cases, and people were generally content while nowadays there’s the feeling that judges no longer dispense justice properly [National Archives of Romania, *The Collection of the Royal Cultural Foundation: The Seat (1921–1946)*, inventory no. 697, m. 81/1939, f. 155]. The legal life of the Paulian commune, Satu Mare County, analyzed on 17 August 1939, by student Ana-Gr. Abody is described as follows: “Disputes caused by drunkenness, fighting, insults, and quarrels are settled with the help of the mayor, priest, and gendarmes. Usually, the gendarmes (whose station is at Dobra) write a report which is only presented to the court only when no peaceful resolution can be found. If reconciliation fails, the report is sent to the prosecutor in Satu Mare, where the case is heard” [National Archives of Romania, *The Collection of the Royal Cultural Foundation: The Seat (1921–1946)*, inventory no. 697, m. 82/1939, f. 333].
 16. P.H. Stahl, *Cum s-a stins Țara Vrancei: Nereju—sat din Vrancea*, Bucharest: Paideia, 2002, 69.
 17. As regards the procedural norms, modern Romania adopted foreign customs that were not the product of the Romanian people’s legal consciousness [E. Herovanu, “Procedura judiciară,” in D. Gusti, C. Orghidan, M. Vulcănescu, V. Leonte, N.P. Arcadian, D. Botta, C. Enescu (coord.), *Enciclopedia României*, I—*Statul*, Bucharest: Imprimeria Națională, 1938, 410].
 18. The failure to comply with the laws (due to lack of knowledge), misinterpretation or incorrect application of the national legal system was a general issue in Greater Romania which caused huge financial and legal prejudices to the interwar peasantry. On 25 October 1935, Liviu Todan, head of the Royal Student Team in the Fibiș commune, Timiș-Torontal County, observed that in this Banat village the peasants understood nothing of modern law and needed free legal guidance and expert assistance which was only available for a fee [National Archives of Romania, *The Collection of the Royal Cultural Foundation: The Seat (1921–1946)*, inventory no. 697, m. 24/1935, f. 76–77].

19. The instability of rural courts in the modern era was astonishing since their competence extended over the rural population (80% of Romanians). Procedurally, the saga of creating, abolishing, recreating, and re-abolishing village courts may seem like a work of fiction. In 1865, the district court (*local court*) was legislated, and the traditional village court (*rural court*)—(authentic rural conciliation tribunals, existing since the dawn of time, under the rule of the old Romanian customary law and reorganized by means of the Organic Regulations) was abolished. In 1879, the village courts were reinstated. Later, the village courts were abolished again and reinstated after a short time. They were put back in place once more under the Law on Justices of the Peace of 1 June 1896, only to be permanently abolished by the Law on Justices of the Peace of 30 December 1907. After 1907, district judges were required to visit villages in their jurisdiction at least twice a month to perform their duties—usually at the mayor's office. Eventually, this rural species of an "itinerant court" was also abolished. After the Great War, this provision became obsolete due to transportation difficulties [A. Rădulescu, "Viața juridică și administrativă a satelor," *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, VII, 1–2, Bucharest: Editura Institutului Social Român, 1927, 35 and 44; I.C. Filitti, E. Decusară, A. Costin, "Organizarea judecătorească în România," in D. Gusti, C. Orghidan, M. Vulcănescu, V. Leonte, N.P. Arcadian, D. Botta, C. Enescu (coord.), *Enciclopedia României, I—Statul*, Bucharest: Imprimeria Națională, 1938, 338–339]. Consequently, customary law disappeared once the last remnants of judicial attributes exercised by the *good people and elders* were abolished. Without the local exercise of customary justice, the very notion of customary law gradually faded away [Z. Rostás, *Monografia ca utopie: interviuri cu Henri H. Stahl (1985–1987)*, Bucharest: Paidéia, 2000, 103]. However, the story of the village courts—modelled after the *community council of good people and elders*—did not end after WWI. The Judicial Organization Law of 25 June 1924 stated that trials would be conducted at the court's location, but "the Minister of Justice may authorize rural and mixed courts to trial minor matters at the commune town halls" [I.C. Filitti, E. Decusară, A. Costin, "Organizarea judecătorească în România," in D. Gusti, C. Orghidan, M. Vulcănescu, V. Leonte, N.P. Arcadian, D. Botta, C. Enescu (coord.), *Enciclopedia României, I—Statul*, Bucharest: Imprimeria Națională, 1938, 343]. Despite repeated efforts to adapt the judicial institutions of the Old Kingdom to the traditional spirit of Romanian villages, the dissatisfaction of the rural people with the slow and remote modern justice system was overwhelming. Most peasants felt excluded from the mechanisms of the modern state—a feeling they did not experience when customary law was in force—and were abandoned and exposed to abuse, with no real access to the legal protection which was provided by public institutions that were distant and indifferent to their problems.
20. The statistics on civil and criminal cases compiled by the Gusti School in interwar villages are particularly interesting. For example, between 1927 and 1937 in the Vrancea village of Nereju, there were 4.6 times more criminal cases (805) than civil ones (175). Of all the accused, 84.3% were men and 15.7% women (I. Vlăduț, *Sociologia juridică în opera lui Dimitrie Gusti*, Bucharest: Lumina Lex, 1997, 250–257).
21. First instance and appeal trials could be heard twice due to the right of opposition in favor of the absent litigant (A. Rădulescu, "Contribuțiuni pentru o mai bună împărțire a dreptății," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, I, 4, ianuarie, Bucharest: Institutul de Editură „Reforma Socială,” 1920, 629–630).

22. Second appeals and revisions could also be heard twice due to the right of opposition in favor of the absent litigant (A. Rădulescu, "Contribuțiuni pentru o mai bună împărțire a dreptății," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, I, 4, ianuarie, Bucharest: Institutul de Editură "Reforma Socială," 1920, 629–630).
23. Professor Andrei Rădulescu—the proper hearing of cases and effective justice were affected by overcrowded courts (A. Rădulescu, "Contribuțiuni pentru o mai bună împărțire a dreptății," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, I, 4, ianuarie, Bucharest: Institutul de Editură "Reforma Socială," 1920, 644–645).
24. A. Rădulescu, "Contribuțiuni pentru o mai bună împărțire a dreptății," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, I, 4, January, Bucharest: Institutul de Editură "Reforma Socială," 1920, 628–661; A. Rădulescu, "Viața juridică și administrativă a satelor," *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, VII, 1–2, Bucharest: Editura Institutului Social Român, 1927, 44–47; G. Focșa, "Contribuție la cercetarea mentalității satului. Convorbire cu Grigorie Loghie din Runcu-Gorj," *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, X, 1–4, Bucharest: Monitorul Oficial și Imprimeria Națională, 1932, 171–172.
25. This is why, in researching criminal law, the Gusti School focused not only on the sociological investigation of criminal offenses, offenses, misdemeanors, and manslaughters, but also on understanding the social, economic, and political causes of these behaviors (P. Selagea, *Sociologie juridică și metodele ei de cercetare: curs teoretico-aplicativ*, Bucharest: Editura Universității Titu Maiorescu, 2003, 139; I. Vlăduț, *Sociologia juridică în opera lui Dimitrie Gusti*, Bucharest: Lumina Lex, 1997, 247).
26. According to Grigorie Loghie, a peasant from Runcu, Gorj, interviewed in July 1930 by sociologist Gheorghe Focșa, crime had significantly increased in modern Romania compared to earlier times, because of the non-enforcement of laws, lack of trust in institutions, non-enforcement of court rulings, and legal inequality (G. Focșa, "Contribuție la cercetarea mentalității satului. Convorbire cu Grigorie Loghie din Runcu-Gorj," *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, X, 1–4, Bucharest: Monitorul Oficial și Imprimeria Națională, 1932, 159 și 169–171).
27. The patrimonial situation of interwar Romanians sometimes turned dramatic, especially in rural areas, due to the spread of customary legal practices (for example, verbal wills made on one's deathbed) which were null and in contradiction with the provisions of modern law (according to which only an authentic act or a solemn contract for a donation were legal) (A. Rădulescu, "Viața juridică și administrativă a satelor," *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, VII, 1–2, Bucharest: Editura Institutului Social Român, 1927, 43–44).
28. Iacob Pomohaci, a peasant from Șanț, Năsăud, told monographer Jeana Manolescu on 18 September 1936: "if we have some trouble with someone, let us come to an agreement and settle things between us so we don't have to go through the courts" (P. Popoiu, 2011, *Șanț după 80 de ani de la prima campanie monografică*, Muzeul Național al Satului "Dimitrie Gusti," II, Craiova: Editura Universitaria, 71).
29. Convinced that justice was "slow and expensive" or that it could "be bought," peasants from Belinț (Banat Region) had no trust in the state judicial institutions or in legal pro-

fessionals such as lawyers (who were seen as dishonest and deceitful). Literate villagers believed that the constitutional framework of the Romanian state was sound in theory, but disregarded and unenforced in practice. This was even more so with the political leaders of interwar Romania whose contempt for the law gave the population a sense of apathy and anarchic distrust in the durability and permanence of Greater Romania (A.C. Brudariu, *Depopularea Banatului: cercetări asupra manifestărilor etico-juridice din satul Belinț*, Timișoara: Institutul de Arte Grafice "Tipografia Românească," 1938, 38–40). An example of the harmful influence of political maneuvering is illustrated by the sociographic analysis of Ion Clopoșel regarding the distortion of the agricultural reform in the districts of Vașcău and Beiuș, in Bihor County (I. Clopoșel, *Sociografie românească. Anchetarea plășilor muntoase: Margina, Almaj, Vașcău și Beiuș*, Cluj: Editura revistei "Societatea de mâine," 1928, 40).

30. Iacob Pomohaci from Șanț, Năsăud, told monographer Jeana Manolescu on 18 September 1936 that it is desirable for people to obey the laws of the Romanian state, even though, in reality, this does not always happen (P. Popoiu, 2011, *Șanț după 80 de ani de la prima campanie monografică*, Muzeul Național al Satului "Dimitrie Gusti," II, Craiova: Editura Universitaria, 71).
31. I.C. Filitti, E. Decusară, A. Costin, "Organizarea judecătorească în România," in D. Gusti, C. Orghidan, M. Vulcănescu, V. Leonte, N.P. Arcadian, D. Botta, C. Enescu (coord.), *Enciclopedia României, I—Statul*, Bucharest: Imprimeria Națională, 1938, 327–347.
32. C. Botez, "Introducerea bătăii ca pedeapsă în legislația noastră penală: o reformă necesară," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, III, 4, Bucharest: Institutul de Editură "Reforma Socială," 1921, 461.
33. C. Botez, "Introducerea bătăii ca pedeapsă în legislația noastră penală: o reformă necesară," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, III, 4, Bucharest: Institutul de Editură "Reforma Socială," 1921, 463–464.
34. A. Rădulescu, "Contribuțiuni pentru o mai bună împărțire a dreptății," *Arhiva pentru Știința și Reforma Socială: organ al Asociației pentru Studiul și Reforma Socială*, I, 4, January, Bucharest: Institutul de Editură "Reforma Socială," 1920, 661–677; A. Rădulescu, "Viața juridică și administrativă a satelor," *Arhiva pentru Știința și Reforma Socială: organ al Institutului Social Român*, VII, 1–2, Bucharest: Editura Institutului Social Român, 1927, 52–56.

Abstract

Historical Prolegomena to the Sociology of Law in Greater Romania

The first field research pertaining to the Sociology of Law was conducted in the villages of Greater Romania by the Sociological School of Bucharest (founded and led by Professor Dimitrie Gusti). Starting with the first monographic campaign conducted by the Gusti School in Goicea Mare, Oltenia (1925), and continuing until sociology was banned by the communist regime—removing it from the school curriculum and from the official classification of professions (1948)—the ethical and legal manifestations of the Romanian society became the building blocks of the sociological research methodology developed by the Gusti School. The Gustian forays in the Sociology of Law meant knowledge and understanding of the perception of peasants in Greater Romania regarding

the traditional and modern judicial systems, the comprehension of the customary and modern law, compliance with the law and the constitution, abuse of power by the state's officials, the abuse of authority perpetrated by public servants, elements of peasant legal mentality, and the dynamics of power between central and peripheral structures within the public administration.

Keywords

sociology of law, rural sociology, legal mentality, Greater Romania, Dimitrie Gusti, Sociological School of Bucharest, customary law, living law, modern law, district court, village court, itinerant court, *community council of good people and elders*