

LAW AS AN INSTRUMENT OF SOCIAL CREATIVITY

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Abstract

Law should not be perceived exclusively as a set of rigid rules, but as a dynamic mechanism that organises, shapes and reinvents social reality. In an era marked by rapid technological, cultural and economic transformations, legal norms are, in fact, becoming a field of institutional and collective creativity. A creative vision of law, manifested through legislation, interpretation, enforcement and education, is essential for an open and democratic society.

Keywords: law, institutional creativity, social transformation, legal innovation, legal education.

INTRODUCTION

The transformations in today's society make us rethink what law is. It is no longer enough to consider law as just a set of imposed rules, but we must recognise it as a sophisticated form of institutionalised social creation. Through laws, groups of people reveal their beliefs, traditions and aspirations for the future in a coherent framework that regulates human relations. The law thus becomes an important factor for social change, for the creation of new practices and for adaptation to the various challenges of contemporary times - from digitalisation to globalisation, from cultural diversity to environmental issues. It becomes, in the sense indicated by Lon L. Fuller, "a human endeavour designed to give moral and rational form to social life"¹. This paper aims to explore the creative dimension of law, understood not only as a normative system, but as a living process of social configuration, in which the activities of lawmaking, interpretation and legal education act as factors generating change and societal progress.

I. CONCEPTUAL FOUNDATIONS OF SOCIAL CREATIVITY

In order to fully exploit the concept of law as an instrument of social creativity, it is useful to clarify the notion of creativity. In the specialist literature, creativity is defined as "the ability to generate new, valuable and surprising ideas"², an intellectual and cultural activity that transcends routine and repetitiveness. In a social context, creativity becomes a mechanism for adaptation, reinvention and enhancement of collective potential. Similarly, law can be thought of as a framework in which the community performs acts of creation, not just application, in the sense of designing normative orders that respond not only to present realities, but also to visions of possible realities. Thus, law becomes a space where rules and imagination, legal requirements and social transformation meet.

II. LEGISLATION AS A CREATIVE ACT

The lawmaking process most directly reflects the creative nature of law. The legislature does not merely "observe" social situations, but anticipates, shapes and guides them. By drafting rules, new normative realities are shaped: for example, the emergence of "new technology" areas in Romanian law, such as the regulation of cyberspace, personal data protection, or the regulation of artificial intelligence. In this regard, it can be seen that the law does not merely seek passive adaptation, but actively participates in creating a framework in which innovation and social diversity can function. A telling example is the emergence of regulations on personal data protection through Regulation (EU) 2016/679 (GDPR), which imposed a new legal culture based on the control of digital information. In Romania, this vision was transposed by Law No. 190/2018, which redefined the limits of individual freedom in relation to technology³.

¹ Lon L. Fuller, *The Morality of Law*, Yale University Press, 1969.

² Margaret Boden, *The Creative Mind: Myths and Mechanisms*, Routledge, 2004.

³ See Law No. 190/2018 on measures for the implementation of Regulation (EU) 2016/679.

Furthermore, legislation can create regulatory incentives for creative activities — for example, in intellectual property law, where the protection of creation stimulates innovation. A recent article points out that “*innovation and creativity are benefits for the evolution of society as a whole*” and that intellectual property law provides “*the basic levers for future economic demands*”⁴. Thus, legislation becomes an act of social invention: the norm is introduced, the possibility is created, and space is opened up for expression.

III. INTERPRETATION AND APPLICATION OF THE RULE – LEGAL CREATIVITY IN PRACTICE

Once promulgated, the legal norm does not remain inert. In the interpretation and application phase, multiple acts of legal creativity arise: courts, administrative bodies and legal practitioners generate meanings, make choices of application, build case law and can change social reality through their decisions. Thus, legal creativity manifests itself in the ability of actors to adapt the law to unforeseen contexts, to engage in dialogue with fundamental values and to outline new directions.

For example, in the field of freedom of expression, international case law recognises that Article 10 of the European Convention on Human Rights also covers freedom of artistic creation, reflecting a creative interaction between norm and reality⁵. This dimension highlights that the application of law involves decisions that transcend the strict wording of the legal text, in a manner analogous to the way an artist uses a canvas: the framework is given, but the expression remains open to innovation.

Through this prism, law becomes an instrument of social transformation – each decision can set precedents, change norms of behaviour, produce new practices and generate a multiplier effect in society. Legal creativity thus belongs not only to the formulation of norms, but also to the way in which they are implemented and evolve over time.

IV. LEGAL EDUCATION – TRAINING LAWYERS AS ARCHITECTS OF THE FUTURE

Legal education is an essential element of law as an instrument of social creativity. Universities, law schools and professional training practices are not limited to imparting knowledge, but also contribute to the development of skills such as critical thinking, innovative analysis and the ability to generate legal solutions adapted to a changing society.

In Romania, Law No. 1/2011 on national education, Article 4, expressly states that the purpose of education is “*the free, comprehensive and harmonious development of human individuality, the formation of an autonomous and creative personality*”⁶. Thus, legal training must include the creative dimension of the legal act. Consequently, future lawyers are called upon to become not only enforcers of the law, but architects of the legal and socio-cultural order, capable of anticipating and generating new forms of regulation.

Creativity-oriented legal education involves interactive methods: case studies, legislation simulations, normative innovation laboratories, all designed to stimulate original thinking. In this way, law evolves from a “*conservative subject*” to a “*creative practice*”. This closes the cycle: law is created (legislation), reinterpreted (case law) and prepared for the future (legal education).

V. CASE STUDY – REGULATING ARTIFICIAL INTELLIGENCE – CREATIVE LEGAL CHALLENGES

In recent decades, the expansion of technologies based on artificial intelligence (AI) has become a major catalyst for social, economic and legal change. This evolution has necessitated a redefinition of the role of law not only as an instrument of control, but also as a force for normative and social creation, capable of structuring innovation within an ethical and equitable framework. The regulation of AI is, par excellence, an example of applied legal creativity, in which the legislator and European institutions seek to harmonise freedom of innovation with the protection of fundamental human values.

The adoption of Regulation (EU) 2024/1689 on artificial intelligence (AI Act)⁷ marks a historic moment in European law, being the first comprehensive legal framework dedicated to AI. Its purpose is twofold: to ensure a high level of protection of fundamental rights and to stimulate the development of “*human-centric*” AI⁸. The Regulation

⁴ Anamaria Pleviț, *Trademark – innovation and creativity – legal protection*, JURIDICE.ro, 9 April 2024.

⁵ Marinela CIOROABĂ, Elena-Delia APOPI, *Freedom of artistic creation and protection of religious feelings*, JURIDICE.ro, 10 July 2010.

⁶ *ee Article 4 of the National Education Law No. 1/2011.*

⁷ *See Regulation (EU) 2024/1689 on artificial intelligence (AI Act).*

⁸ *See European Commission – “Regulation on AI: towards human-centred AI”.*

applies directly in all Member States, including Romania, and introduces an innovative classification of AI systems based on the risks they pose – from unacceptable risk, prohibited by law, to minimal risk, for which self-regulation is recommended⁹.

This approach reflects a creative vision of normativity, as the legislator does not limit itself to defining prohibitions, but builds a flexible architecture capable of adapting to the rapid pace of technological innovation. At the same time, the text of the Regulation encourages the development of “*test areas*” or “*regulatory sandboxes*”, where AI technologies can be tested under controlled conditions, under the supervision of the authorities¹⁰. Through this mechanism, the law becomes an institutional laboratory for innovation, becoming an active partner in technological progress.

In Romania, the National Strategy for Artificial Intelligence 2024–2027¹¹ complements the European framework, proposing a progressive adaptation of internal rules to the principles of the AI Act. The strategic document identifies the need for “*agile governance*” and a regulatory framework that is open to innovation but based on respect for fundamental rights and technological ethics. In this direction, Romania aims to strengthen cooperation between academia, public institutions and the private sector to create an “*intelligent and responsible*” regulatory ecosystem.

The legal challenges posed by AI are manifold and require an interdisciplinary and creative approach. One of the most sensitive issues is that of legal liability for autonomous decisions: if an AI system produces an error that causes damage, who is liable – the manufacturer, the programmer, the user or the entity that implemented the system?¹² In the absence of an identifiable natural person, questions arise regarding the anthropomorphisation of liability and even the idea of an “*electronic personality*” – a controversial concept, but one that is discussed in doctrine as a possible solution for the future.

Another major challenge is algorithmic transparency and the explainability of automated decisions. The Regulation requires AI systems used in sensitive areas (justice, health, finance, education) to provide guarantees of comprehensibility and auditability in order to ensure the protection of individual rights. This requires a twofold legal innovation: on the one hand, the translation of ethical principles into clear legal rules and, on the other hand, the development of institutional mechanisms to verify technological compliance.

Furthermore, the interaction between AI regulation and other branches of law – such as personal data law (GDPR), labour law, criminal law and intellectual property law – is giving rise to new areas of normative synthesis¹³. Thus, AI law is becoming a space of convergence between ethics, technology and jurisprudence, which requires lawyers to have a capacity for creative interpretation, capable of harmonising seemingly divergent disciplines.

In terms of education, these challenges call for the training of a new generation of digital lawyers, familiar with both traditional legal concepts and algorithms, machine learning models and the principles of AI ethics. Law universities are called upon to develop interdisciplinary courses, legislative analysis laboratories and regulatory simulations designed to stimulate innovative legal thinking.

In conclusion, the regulation of artificial intelligence shows how creative the law can be today. It proves that the law is not an inert system, but a form of creative rationality, capable of shaping technological evolution in accordance with the fundamental values of human dignity, fairness and transparency. In this sense, AI law not only regulates innovation, but also co-creates it, transforming itself into a space for dialogue between humans, machines and society.

VI. CHALLENGES AND LIMITS OF LEGAL CREATIVITY

However, the concept of law as an instrument of social creativity is not without its limitations. Legal creativity can come into tension with traditional principles of law: legality, legal certainty, predictability. If the norm becomes too fluid or unpredictable, there is a risk of undermining the rule of law. In addition, excessive creativity could lead to inequalities in application or arbitrariness. The pursuit of innovation must be balanced by fundamental legal safeguards.

⁹ Monica Stătescu, Eduard Maxim, *EU Artificial Intelligence Act – Risk-based classification and compliance*, *Lexology*, 2025.

¹⁰ Hunton Andrews Kurth, *EU AI Act – overview of innovation-friendly regulation*, 18 July 2024.

¹¹ Romania’s National Artificial Intelligence Strategy for 2024-2027.

¹² Mircea Duțu, *AI Act and the EU’s area of freedom, security and justice*, *Wolters Kluwer*, 13 August 2025.

¹³ Andrei Mircea Zamfirescu, *Romania: EU Artificial Intelligence Regulation – what companies need to know*, *BNT Attorneys*, 2 September 2024.

Another challenge is “*legal innovation*” that crosses the line between adaptation and experimentation. Rules developed in a creative spirit must be accompanied by impact assessments, monitoring, and the possibility of reconfiguration. Without these, the drive for innovation risks becoming a source of instability.

Likewise, creativity-oriented legal education requires resources, infrastructure and an open mindset — conditions that may be lacking in some countries. In Romania, for example, the effective guarantee of social rights is still imperfect, reflecting a gap between normative potential and practical implementation¹⁴. Therefore, creative law must be accompanied by robust institutional mechanisms.

VII. PROPOSALS FOR CREATIVE-LEGAL SOCIETY

For the law to truly function as an instrument of social creativity, an integrated approach is needed, focused on participation, innovation and continuous evaluation of regulatory impact. Firstly, public participation in the law-making process must be intensified. Open consultations, digital platforms for legislative feedback and participatory regulatory design initiatives can transform the community into a genuine co-creator of legal norms. In this regard, innovative tools such as legislative hackathons could contribute to the formulation of regulations that are better adapted to the real needs of society.

Secondly, the legal education process needs to be reformed, with a stronger focus on creative skills. Law schools should integrate subjects such as legal innovation, regulatory design, public policy simulations, and participatory governance methodology into their curricula. In this way, future lawyers will not only be interpreters of existing norms, but also architects of future normativity, capable of thinking critically and shaping processes of social transformation.

Thirdly, mechanisms for assessing the social impact of regulations must be implemented. Creative legislation is not limited to the moment of adoption of the normative act, but requires constant monitoring of its impact on society. To this end, indicators of regulatory efficiency and fairness, periodic review procedures and iterative adjustment mechanisms can be introduced to enable continuous improvement of the legislative framework.

At the same time, the synergy between law, technology and culture must be recognised and harnessed as a source of legal innovation. Intellectual property regulations should promote creativity as a core value, while protecting emerging forms of cultural and digital expression. In this vision, creative industries become a true vector of social transformation, and the law becomes an essential partner in striking a balance between innovation and responsibility.

Finally, it is essential to strengthen the institutional infrastructure of creative law. The creation of agile regulatory bodies, policy labs and research centres in the field of law and innovation would provide a conducive framework for normative experimentation and adaptive governance. These structures could act as bridges between academia, public administration and the private sector, generating flexible and effective legal solutions to the challenges of a constantly changing society.

Through these measures, law can fully assert its creative and constructive function. It is no longer just a guardian of the status quo, but becomes an architect of the future, an instrument of intelligent and responsible social modelling, capable of harmonising legal stability with the dynamism of social transformation.

CONCLUSIONS

Through this article, I have attempted to demonstrate that law should not be perceived exclusively as an instrument of social control or coercion, but as an active vector of collective creativity and a mechanism for shaping social reality. Beyond its classic function as a guarantor of order, law has a generative dimension through which society can imagine, design and build its own normative future.

Through its essential activities, namely lawmaking, interpretation, enforcement and legal education, law becomes a continuous process of symbolic and institutional construction, capable of transforming collective values into norms and norms into tangible social realities. In this sense, legal creativity is not an ornamental or marginal exercise, but a constituent element of the adaptability of the legal system to the changes of the contemporary era.

In a world characterised by technological volatility, value pluralism and global interdependence, the ability of law to innovate becomes a *sine qua non* condition for its relevance. From the challenges posed by digitalisation and artificial intelligence to the demands of sustainability and social equity, the law is called upon to respond through normative imagination, institutional flexibility and interdisciplinary dialogue.

¹⁴ Marin Voicu, *SOCIAL RIGHTS are CONCRETE and EFFECTIVE RIGHTS, GUARANTEED or ILLUSORY, in the EU and in Romania, as a Member State Some legal and sociological coordinates*, JURIDICE.ro, 18 November 2022.

Thus, creative law asserts itself as a form of future-oriented rationality, a rationality that not only orders but also creates possibilities for social existence. It is no longer a mere guardian of static equilibrium, but an architect of democratic transformation, capable of integrating innovation, diversity and responsibility into a coherent vision of social justice.

On this basis, legal education and professional practice must go beyond the exclusively normative paradigm and include dimensions of creation, anticipation and legal design. The training of future lawyers must cultivate not only the ability to apply the law, but also to imagine, reform and reinterpret it in line with the new needs of society.

In essence, creative law becomes the intellectual environment of orderly freedom, a space where legal thinking is transformed into social action and where the norm becomes the dynamic expression of the human spirit. Therefore, cultivating legal creativity is not a theoretical ideal, but a practical necessity for a society that aspires to balance, innovation and sustainable progress.

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