**Inside Pandora’s Box, finding the roots of Natural Law**

**Applicability in the Future of the European Law**

Dr. Vlad Bărbat[[1]](#footnote-1)

**Abstract**

The main purpose of this article is to highlight the importance of a more “deconstructed” Legal European system in which all actions be guided firstly by actions of the natural law and afterwards by the stiff and uneasy legal positivism that dominates the entire European Legal Framework. In this aspect, we would try to investigate why we are still addressing positive Law and following the procedures indicated by natural Law. The article presents the argument that contemporary societies are in the face of increasing overproduction of shocking standards its efficient operation. However, the argument is deconstructed later, especially through comparison (Europe vs. Analysis, note that what is of great concern in this respect of The Atlantic does not seem to be on the other side. The article concludes with some possible remedies – admitting that we are facing a disease –to the current state of overproduction.

**Keywords: EU, institutional cloaking, legal positivism, primacy of natural law, European Law, normativism, cultural hegemony**

**Introduction**

Monday morning, we set our goals straight to buy a car and on the same day a wonderful apartment situated in the heart of our city. We go to the local car dealer and bank in order to get a loan and, bewildered by the amount of sheer paperwork that we have to fill are immediately discouraged to continue any intention. Construction permits, bank evaluation, fluctuations of the bank interests, notary procedures, cadastral assessment and many fees that have to be submitted to the public authorities. Not to mention the intricate roads and unceasing roads from point A to point B, from one institution to the other, yet that is the course of life seen as normality. In this spectrum of continuous pendulum movement gravitates all Legal procedures from one corner to the other and the image designed by this system of super norms drains the essence of all Legal thought.

Whether we discuss political, social, environmental changes within the European member states, the idea of change affects our daily lives and determines our social state. The research will aim an anticipatory effect and will focus on the European rule of law and its struggle to continuously build an equalitarian framework for the member states and the dimensions of maintaining equity within its borders facing the future of a changing society (in interpretation of art.3 (5) TUE). We stress the ongoing power shifts that shape the European continent and how can the European rule of law, throughout its pillars and institutions, protect the integrity of the European Union from endogamous separation movements created by forces stemming the relationship with its member states. Furthermore, our aim would be to identify future perils for the foundations of European Law and proposing solutions to maintaining equity of the rule of lawn in direct relationship with the with the member states without creating the phenomenon of the “supranational state” or the legal and institutional “capture” phenomenon. The research tries to demonstrate that systemic deficiencies affecting the functioning of the rule of law pullulate both horizontally, since they affect relations between the Member States, and vertically, distorting the mechanisms of co-operation between the EU institutions and the member states. (“The Rule of Law and the Future of Europe”)

**The European Rule of Law Challenged**

The rule of law is being questioned by those who invoke values that are seen as "superior" or at least "equivalent," such as the will of the people, the national interest, the precedence of justice over the law, the idea that all institutions and decision-making bodies should have direct democratic legitimacy, and the requirement that their decisions be effective. The priority of law over power hierarchies is thus rejected where the rule of law is under attack, and a new social order is proposed, stopping the development of European civilization. Second, by reducing democracy to the notion of the majority's democratic legitimacy, the basic foundations of the democratic system—which upholds the rule of law—are being weakened.

The separation of powers and respect for fundamental rights (even against the desire of a democratically elected parliament) are gradually eliminated under this constellation, two key tenets of modern democracy. The emergence of an illiberal democracy is frequently used to characterize such a change to a new political and legal order. Third, under this situation, certain member states openly contest the independent judiciary's function. The requirement (sine qua non) for the protection of all other (basic) rights is the meta-right to effective legal protection. In many several ways, including through more or less direct involvement by the political authorities, the independence of courts is being questioned. This is because there is no single standard for measuring judicial independence; instead, it depends on a variety of factors including the constitutional tradition and established constitutional practice, the tenacity and durability of the democratic practice in the member state, the general level of legal literacy, and the field's historical performance.

**On Jus and Nature**

The iusnaturalist perspective views law as a value, an ideal, and a finality rather than a positive truth. Not all finalities will embrace the theory in the context of jusnaturalist perspectives. It is necessary to distinguish between utilitarianism, according to which the goal of law is to promote social group pleasures, and the jusnaturalist interpretation, which identifies justice as the finality of law. The scientific phrase for its study is somewhat inadequate because the law does not convert into a positive reality; rather, it is a value that should be sought after and an ideal that directs our social concepts on how we perceive each other and our civilization.[[2]](#footnote-2) .

The relationship between the two major doctrines is asymmetrical. The positivists, on the other hand, do not recognize the existence of a natural right, as they deny the possibility of knowing values, the finality, the ideal. Hume[[3]](#footnote-3), for example, denounces naturalistic paralogism, showing that, in most naturalistic doctrines, at a given moment, the discourse slides imperceptibly from the register of factual findings to an abstract one of the ideal. Hume claims that a norm cannot be deduced from a descriptive statement, a prescription from a sentence; what is (is) will never logically tell us what should (ought), therefore ontology or the search for the essential nature of things will never be able to find a system of rules of conduct. The logically irreconcilable distinction between being (*sein*) and having to (*sollen*) is taken over by Kant and generalized with regard to knowledge. Kelsen's entire edifice, so appreciated in the legal world, is built starting from the opposition *sein - sollen*, which he superimposes on the reality - value dualism. Science can only issue propositions, by the axiological neutral hypothesis, about reality[[4]](#footnote-4). The transition from *sein* to *sollen* can only be made through value judgments, thus leaving the sphere of science[[5]](#footnote-5).

Insisting on the need for separation between science and politics, advocates for positive legal theory argue that this goal is to protect legal scholarship by separating it from approaches from other fields such as economics, politics, sociology, or psychology that are not related to the study of law but are separate from it[[6]](#footnote-6). Natural law's speculative nature deprives it of its status as a subject of legal scholars' research. The modification of its shape caused by the dismissal of some "pure" sciences is significant. Regardless of the topic at hand—concept, methodology, or positivist ideologies—rights are reduced to laws, judicial precedents, historical timelines, or contemporary social trends[[7]](#footnote-7).

**The Non-Law Theory and a Contrasting Image of the Future**

The place where the law has retreated or where its abstention is obvious, despite it would have had the theoretical vocation to be there, is essentially what Jean Carbonnier's non-law is characterized by[[8]](#footnote-8). Natural obligation would appear to follow the same pattern at first glance: an obligation to which the law removes its sanction or fails to impose it implies the same mechanism. The jurist might therefore be inclined to use this idea-metaphor to support the exclusion of natural obligation from the legal system. There is only one clear similarity. We quickly see that the solution to the legal issue of natural obligation is not found once we delve into the theory's depth, which was, by the way, quite cleverly built.

He must first recognize that the idea of non-law is one that is defined in relation to the idea of law. However, this immediately assumes a position on the reference object that is already set in stone. The concept of non-law is defined through the lens of two parameters, and should not be confused with the violation of the law (although, in an accessory way, such behavior can enter the phenomenon of non-law), with anti-law (the unjust law imposed by totalitarian regimes), with sub-law (or infra-legal relations, so-called folkways, socially obligatory manners that are not imposed by public authorities), or with non-contentious law. To counter the *panjurism* premise, which dominates the ideas of dogmatic jurists, there is first a transfer of competence from law to non-law, followed by a sociological vision of law that is reduced to "official" law, characterized by two constants, which thus become criteria of the juridical: coercion (understood as the power to impose, the possibility of forced execution or legalized violence) and eventus *judicii* (the respective social relationship potential to be subjected, in any form ).

Additionally, the vast majority of the proposed non-law hypotheses pertain to the official rule rather than the substantive rule of law, more specifically the rule of law established by the legislator and effectively enforced by the authorities. The adage "happy people live as if law does not exist" simply means that they live in accordance with the laws of justice, not that they are exempt from the application of the law. Only unhealthy expressions of legal life, not life itself, such as court appeals or government interference. Smaller contracts or those that the parties keep private are nevertheless valid even if they are not presented to the court; what matters is the purpose of the parties to have legal implications, which means to change the existing legal system. There are several legal thresholds, however[[9]](#footnote-9) they are not always used to distinguish between what is lawful and what is not. The legal system exists, even if it is considered latent by the authorities, so that it does not become apparent. The responsibilities of respect, fidelity, moral support, and material support between spouses were not imposed by their legal consecration and even the choosing of friends or life partners are not affected by a disagreement regarding them.

In order to arrive at a new understanding of law, Professor Carbonnier redefines the relationships between the state and society before establishing non-law as a principle of legal policy. As a result, the idea of a less “etatic” society is pushed, with the state serving as merely one of the social order's articulations (along with morality, morals, social conventions, etc.) rather than acting as the society's primary unifying force. The non-right stands in for society's fledgling claim to freedom from a right that is nothing more than a manifestation of state power[[10]](#footnote-10) Non-law is not void, chaos, riot, disorder, or anarchy; rather, it is a constructive phenomenon that frequently takes the law as its model and strives for the same goals of order, harmony, and social peace. Professor Carbonnier[[11]](#footnote-11) believes that the key to a legislative plan is the acceptance of the non-right. The politics of non-law are those of a disengagement from the legal system.

It is with these considerations that we think of what the European society will evolve around the paradigm of change within the system, the European rule of law is considered to have its origin in the formal legality and process[[12]](#footnote-12) Formal legality means that Laws must be universal (applicable to everyone in a similar scenario), given out in advance (no retroactive laws), and made publicly available (promulgated); rule of law, not men: the responsibility of a separate and impartial judiciary must be in charge of enforcing the law, which behaves impartially, without bias or arbitrary judgment, and without any passion the litigants; the court also has the authority to conduct judicial review of other departments of ensuring that the fundamentals of government are regulated by written laws are faithfully upheld. The fundamental elements of the rule of law were outlined by Legality, legal certainty, equality before the law, and other Venice Commission access to justice and nondiscrimination.

**The lack of Laws in The Future as result of institutional combination**

As a result of this ultra-ambiguous cluster of norms combination, we get the feeling that there is no sense in anything that we would plan, as the continuous outburst of planned law within the Eu directs us and quantifiers our lives daily. Norms crave new norms and the lack of compliance with the existing ones expresses the need for new increasingly. This need for a continuous afflux will end in the Future, we can imagine the desolation of norm-creating as norms are a desirable kind of social control[[13]](#footnote-13)since a regulation may be beneficial but too expensive for the state to implement in comparison to the advantages. A regulation prohibiting bad table manners, for instance, is hardly appropriate for incorporation into the legislation. However, compared to laws, norms have a number of disadvantages. Since no one individual or political group can take credit for the creation of a norm, norms are even more of a public good than laws. Additionally, the expense of imposing penalties for breaking a rule cannot be covered by taxation that is mandated; rather, it must be borne freely by those who uphold the rule[[14]](#footnote-14). These characteristics of norms make it seem inevitable that they would be underdeveloped.

In this aspect we ask ourselves what would be the efficacy of normative Law in the Future ? The European conception of the "rule of law" differs greatly from the Anglo-Saxon model and is correctly referred to as a "État de droit" or "Rechtsstaat," with the State serving as the franchiser of normative authorities or the practically only maker of laws. The connections to the prevailing political theory are evident throughout Europe, whether in the North or the South, on the continent or on an island[[15]](#footnote-15). The continued importance of legal realism and the scant influence of European political theory in the US unavoidably strengthen a sociological perspective that centers, for good reason, on social norms.

**Future Scenarios, Solutions and Cures (Ping-Pong Soft Law/Hard Law)**

We are inclined to believe that the European Union is a welfare and that its institutions that continuously assure social ties and solidarity are at a standstill, overcoming the strictly procedural aspects that hold the instruments of law enforcement, (the crisis of the social welfare state, of the welfare state), the forms of the relationship between law and society and the ways of establishing individual and collective identities. The European legal system risks transforming itself from a reparative right, into a business right in which the negotiation has the advantage over the application of the rule, without justice. Therefore, if the rule of law is provoked or challenged, the dominance and primacy of law over all statal forces and hierarchies is rejected, thus diminishing the elements of democracy and its legitimacy within the member states

First, compared to hard law, soft law agreements are simpler to complete and have lower transactional bureaucratic expenses. Second, soft law standards are adopted when little is at risk: the goal is straightforward to achieve; states are reasonably confident that they will not stray from the promised behavior in the future because the issue is not that important. There is no need to spend money on a legally enforceable agreement in those circumstances. Thirdly, and in contrast to the second argument, states are more likely to embrace soft legislation when they have important interests that they do not want to jeopardize[[16]](#footnote-16).

They understand that harsh legislation involves concessions and jeopardizes sovereignty, and that soft law will have less of an impact than strong law, however, it is highly unlikely that the future of the European rule of law will bring forth a complete “delegalization”[[17]](#footnote-17) as there are normative trends issued by the European Commission and Parliament that mandate the need for a stable and clear legislation. In this aspect we can see the actions performed by the European Stability Mechanism to permanently safeguard and assist member states in financial need and assure capital markets stability.[[18]](#footnote-18) Here, we can as well mention, the ongoing desire of the European Parliament to console the powers of the member states with the general interest of the Union. In this sense can we imagine the primacy of a “non-norm” European society and if so, what could be the limits? There are some resolute authors that express a vivid interest in the subject, here we mention Professor Vicenzo Zeno-Zencovich that proposes the insertion of the “sunset clauses”: “Explicitly or implicitly introduced in EU normative texts “sunset clauses” convey the idea that legislation is no longer a long-term product but depends on economic and social conditions. When the latter changes, so does legislation. It is doubtful, however, that such clauses determine, after a certain time, the disappearance of norms as if they were degradable materials. Generally, once they have expired, they are subject to a restyling which brings to a wider and more complex intervention. If one follows the metaphor of the sunset one must acknowledge that after a very short night the normative sun rises again, stronger than before[[19]](#footnote-19).”

**European Integrity: Supra-nationalism vs. Nationalism and Identification of the Rule of Law**

Another aspect that we would have to reflect upon is the exact nature of state identity in the future as the supremacy principle of the European rule of law may become obsolete. In Western political culture it is defined that states are an aggregate of cultures associated with specific territories with a complex mélange of ethnic groups, which is why for instance an apparent “isolated “matter risks to be seen as of “general interest” that may affect the integrity of the supremacy principle. For instance, if we think that polluting the Tisza River that flows in the Danube that on its way to the Black Sea borders Romania, Bulgaria and Ukraine may generate firstly a regional crisis and may escalate in an international crisis. It is therefore that the main integration model proposed by the European framework ( the intra -governmental model and the federal model ) we observe among other specialists in the field[[20]](#footnote-20) that a unique hybrid model of nation- state is proposed.

The “structural” model of the hybrid model has in the course of the twentieth century suffered substantial modifications (border shifts, status quo political dynamics, Parliamentary groups mélange) and many such political dynamics. In these situations, we are inclined to believe that the European Law is “Law without a State”[[21]](#footnote-21), of course the proportions of analysis have to be maintained as the whole concept of the state has to be defined in outer source of social order, ethnic groups, political identity, of course it will be difficult to define the epitome of social unity outside these objective criteria. As it stands, it will be our purpose in the coming future to guard the European legal framework in terms of legal primacy of the Law for what it is : a commonwealth of high human standards and not the mechanistic perpetuum of norms that generate a blind coherence and obeisance Furthermore, why should the European Rule of Law remain within the public sphere? The growing nationalist movements of Europe In an effort to define legal pluralism from an internal perspective, we often come to an end when we understand that a legal order just cannot afford to hold back from claiming to be a single entity, and as a result a multiple final references on which to base a rule or judgment. Such a hierarchy is unthinkable. The most we have been able to conceive. There is some intricacy in the cohesiveness of a single legal system, such as that it is flexible enough to incorporate quite diverse features into one structure. In an effort to define legal pluralism from an internal perspective, we often end when we understand that a legal order just cannot afford to hold back from claiming to be a single entity, and as a result multiple final references on which to base a rule or judgment. Such a hierarchy is unthinkable. The most we have been able to conceive. There is some intricacy in the cohesiveness of a single legal system, such as that it is flexible enough to incorporate quite diverse features into one structure.

**What can we conclude?**

 The European Rule of Law will be the subject of change along with the entire social institutional structure of the European Union, new policies will be created to adapt its beneficiaries, new Legislative walls will be created, and a fortress of complex procedures adopted once more by the European Parliament as to assure its survival. But has the European Rule of Law forgot that the landmarks of its present and future lie in the actions of man? It may sound redundant, but in the mechanistic future still to be awaited, this concept of Man before the Law and Law for the Man risks becoming obsolete. This can be our greater chance of pleading for soft law, as it will possibly (from our perspective) replace the current self-regulating and ultra-mechanistic Rule of Law. Soft law is the greater creation of natural law, the epitome of human natural behavior- the Norm will transgress the Rule[[22]](#footnote-22) widely seen as impersonal, unpractical, and sterile. Natural behavior throughout natural law will determine a more social responsibility towards society and effectiveness opposing Rule/Regulation – that symbolizes the area of confusion ( as it will fail to be regarded as the sole source of social stability).

Another point we would like to stress is the increasing phenomenon of “cultural hegemony” representing the lack of reaction to what makes the world what it is today, better said, common ongoing practices dictated or imposed and integrated into society by one group. Unconsciously (or conscious enough) the everyday cultural domination will be a standard practice in the Future European establishment throughout: Legal consumerism (ultra-normativity without any social purpose), the upheaval of the nation-state vs. federalist unions. In this constellation, the battle will, in the Future, most certainly be taken on the field of Legal reasoning, if societies ( implicitly the EU) will be able to adapt to Man’s natural state and not construct a Kafkaesque normative paradise.

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2. Fr. Gény, Méthode d’interprétation et sources en droit privé positif. Essai critique, 2e éd., LGDJ, Paris, 1919, t. 2, nr. 162: „Sans prétendre justifier, sous le rapport de la justice absolue, les institutions juridiques de toutes les époques et de tous les lieux, il suffit, pour écarter le scandale de leur diversité, d’observer que, presque toujours, le but a été moins différent que les moyens de le réaliser. Mais, si l’on admet, d’après la raison, l’expérience, et le sentiment intime, l’uniformité de la nature humaine, l’identité constante de sa destinée, et l’existence d’un ordre naturel permanent de rapports entre les éléments du monde, on en conclura nécessairement, que les principes de pure justice, qui ne sont qu’une des faces de cet ordre, conservent, au milieu des variétés et des contingences de leur mise en œuvre, un caractère universel et immuable”. Adde E. Picard, Les constantes du droit : Institutes juridiques modernes, Éd. Ernest Flammarion, Paris, 1921 apud R.Rizoiu, Despre nevoia ( realistă) de drept natural, Article published on the Universul Juridic Online Platform, consulted on the 8.09.2023, Link: [Despre nevoia (realistă) de drept natural - ESSENTIALS (juridice.ro)](https://www.juridice.ro/essentials/7012/despre-nevoia-realista-de-drept-natural); [↑](#footnote-ref-2)
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