

CONSIDERATIONS ON THE EVOLUTION OF NATURAL LAW FROM THE PERSPECTIVE OF THE CHALLENGES OF CONTEMPORARY SOCIETY

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Abstract

This paper briefly analyzes a new perspective regarding natural law and its effects on the contemporary society, especially from the perspective of the social interaction of legal persons. The present study aims to analyze whether natural law can be divided into two components: one internal and one external, which also can influence and complement one another. Although at first glance it can be considered that legal positivism has a special influence on the normative social system, one should consider more likely that the two general schools of thought - natural law and legal positivism - are complementary and harmonize each other. The legal phenomena that systematically influences the cultural matrix of the system of law can be analyzed from the perspective of the natural law. Natural law is closely linked to the external phenomenology that influences the social normative system and implicitly the system of law, while legal positivism is closer to the formal sources of law. Within the concept of natural law, after a thorough analysis, a new different concept may be envisioned, namely the concept of universal law, which may be different from natural law, although it may have the same sources as the latter. These two concepts can be used as tools for analyzing how people interact within the system of law, especially in the framework of social and economic relations that are established today between legal entities. This paper tries to present the structure and the traits of each of these concepts and their similarities and differences. At the end of the paper, brief conclusions regarding the effects of these concepts on the legal relations established between various legal entities are presented, as well as the effects that appear because of their interaction.

Keywords: natural law, universal law, legal positivism, law system.

JEL Classification: K10; K40.

1. Introductory aspects

In the study of the general theory of law, over time, several trends of thought have been highlighted which have attempted to solve the problem of the origin, structure and substance of the law. Broadly speaking, these are: the school of natural law, the positivist school, the historical school of law and the organic theory of law. Of course, each of them can be divided into several smaller currents of opinion, but in this paper, we will analyze the natural law school of thought from a general perspective with holistic accents.

The school of natural law is probably the oldest, as elements of natural law are found in the work of Heraclitus and later in that of Aristotle and Sophocles². Legal positivism is characterized by reductionism³, being based on a thesis contrary to natural law, by rejecting the concept of aprioristic, universal and transcendental order. The Historical School of Law is based on Karl Savigny's ideas on the existence of a specific concept - *volksgeist*, which represents the national spirit⁴. Of course, the law is in close connection with the state, the latter being defined in specialized literature as a form of creation of law⁵. Finally, the organic theory of law was developed by Herbert Spencer, who regarded society as a living organism by analogy with biology. In principle, natural law is based on the concept of aprioristic law with perennial valences. Even during the times of contractualism theories, natural law was envisioned as having an irreducible character. Natural law bases itself on two premises, namely the existence of a universal order that governs people and the idea of the inalienable rights of the individual persons⁶.

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² Sofia Popescu, *Teoria generală a dreptului*, Lumina Lex, Bucharest, 2000, p. 45.

³ Mihai Bădescu, *Pledoarie pentru filosofia dreptului*, „Revista de Științe Juridice”, a special issue dedicated to the 70th anniversary of Prof. Gheorghe Dănișor, vol. 26, no. 1/2015, p. 99.

⁴ <https://www.britannica.com/biography/Friedrich-Karl-von-Savigny> (consulted on 1.10.2017).

⁵ Cătălin-Silviu Săraru, *The state and the separation of powers*, „Juridical Tribune”, volume 5, issue 2, december 2015, p. 274.

⁶ Sofia Popescu, *op.cit.*, p. 59.

In view of the above, it is necessary to study to what extent the concept of a universal aprioristic order is subject to external material phenomenology and social dynamics. Law has an abstract component that can be easily integrated within a universal order concept. However, we should take into consideration the necessity to analyze whether the concept of natural law should be brought up to date in relation to the current society's requirements. Also, we should analyze to what extent the principles of natural law can be applied to legal relations that are established beyond the terrestrial space of Earth.

These issues are also of relevance to business law, as exploration activities will primarily be carried out for exploiting natural resources.

2. Brief considerations on possible limitations of natural law viewed from the current perspective

It may be possible that the principles of natural law, as they have been stated in doctrine, over time can no longer provide an adequate framework to current and future legal realities.

In this sense, it is necessary to discuss at least the following aspects: a) Is natural law and law in general dependent on physical phenomenology? b) Is natural law and law in general dependent on social phenomenology? In order to prove the importance of the two proposed issues, we believe that we need to consider the next hypothesis for the future: now the world's population counts over 7 billion people, a number that is steadily increasing in relation to the resources more and more limited. Starting from this hypothesis, two sequels can be predicted: 1) people will begin a process of colonization of other extraterrestrial bodies, or 2) the population number could be controlled somewhat or will be reduced for various reasons. I think that of the two sequels, the most desirable would be the first, given that the population cannot be so easily controlled, without breaking some fundamental freedoms, and the population reduction would have negative effects. As part of the expansion process, of course there is also the possibility of encountering other forms of intelligent life, but we have no criteria at this time to determine whether they will be friendly or hostile, more advanced or less technologically advanced than we are. In support of the above hypothesis, it is sufficient to mention that, for example, the United States is planning human missions to explore the Martian plane around the year 2030⁷, China seeks to explore the planet Mars in the period 2040-2060⁸ while Russia will probably be sending out crews to explore the same planet during the years 2040-2045⁹.

In the context of the above hypothesis, considering the questions raised at the beginning of the previous paragraph, we might also consider the following issues: If natural law is dependent on physical phenomenology, then the nuances of natural law would be different on an environment determined by interplanetary transports or exploration of a celestial body to be colonized by humans. Conversely, if natural law is dependent on social phenomenology, then these nuances are likely to be much less different.

We believe that at present we can accept that the ideas of natural law, as they were stated in antiquity, and later in medieval times and even in the sec. XVII-XIX no longer meet the current requirements. In ancient times, Aristotle spoke of a universal law, but from its description results that he refers to what we would consider today natural law. Consequently, from the description in specialized literature of some of the principles of Aristotle's concept of unwritten universal law: "*readiness to help our friends, and the like*"¹⁰ one may observe that these principles are still defined by human perception within a reference framework of specific cultural values. In the same manner, John Locke considered that the individual has a central role and is the titular of certain inalienable rights like the right to life or the right of property et.al., but analyzed from the perspective to the human system of values However, placing the human being at the center of the universe and defining

⁷ https://www.nasa.gov/sites/default/files/atoms/files/journey-to-mars-next-steps-20151008_508.pdf, p. 28, (consulted on 1.10.2017).

⁸ http://military.china.com/zh_cn/news/568/20060214/13091486.html (consulted on 1.10.2017).

⁹ <http://versii.com/news/238798/> (consulted on 1.10.2017).

¹⁰ James Bernard Murphy, *The Philosophy of Customary Law*, Oxford Press, London, 2014, p. 11.

him as the sole source of all the inalienable rights cannot not reflect the entirety of absolute and universal rights. Moreover, the social contract theorized by J.J. Rousseau was also related to the natural law and specific to individuals.

3. The need to highlight a distinct branch of natural law as a result of changing the causality of legal phenomenology

Given that natural law, in its original form and definition, can no longer serve the exigencies of current and future legal reality, it is necessary to consider the possibility of at least ideologically contouring a distinct branch of natural law, starting however from the same premises.

Thus, we appreciate that natural law is closely related to the natural, external environmental phenomenology. Also, its principles have been enunciated by the supporters of natural law, as an effect to the observation of the environment. We believe that neither Aristotle during the ancient Greek times, nor St. Thomas Aquinas in the medieval period, nor Hugo Grotius or Locke later, contemplated clarifying the perception of natural law beyond the boundaries of the Earth itself. The need to clarify the reference framework of natural law is linked to the fact that, in the absence of legislative sources, it is likely that the general principles of law, which are in line with the concepts of natural law, will be used. Perhaps all rights related to exploration and exploitation will be governed by international treaties, but they will not be able to cover all the real legal possibilities that people will encounter in the extra-atmospheric space. The hierarchy of the sources of law is evidenced explicitly or implicitly in all legal systems. For example, in Romanian civil law, art. 1 of the Civil Code stipulates that the sources of civil law are the law, customs and general principles of law, which implies a certain hierarchy: firstly, the law applies. If the legal situation is not prescribed by law, the customary law is applied, and in the absence of these, legal provisions regarding similar situations. If there are no legal similar provisions, the general principles of law apply. If, from the point of view of law priority, the hierarchy is clear, we appreciate that from the evolutionary point of view, we can draw the following scheme: through the appreciation of the general principles of law, legal customs and customs were gradually established, and through the crystallization of legal habits, norms were drafted and brought into force to regulate different legal situations.

In relation to the above, we consider that it is necessary to analyze the way in which the general principles of law are outlined, as these principles are subordinated to natural law.

No less important in this situation is the material and formal legal communication, related to the sources of law. Thus, material communication, which implies the communication of requirements and needs of the society to the state authorities, is closely related to the law-making factors, including the environment. In this sense, material communication is subordinated to natural law, rather than legal positivism.

Under these circumstances, changing the causality of material phenomenology will also lead to a change in the causality of legal phenomenology, meaning that natural law within the limits it knows today is no longer sufficient to provide an appropriate legal framework. For example, in the doctrine, it was shown that the fundamental, inalienable rights of the individual, which under the concepts of natural law are the rights of a man. These rights are conceptually identical to the rights of all other people, and are universal. Wherever people are in any place, at any time, these rights must subsist according to reason. If these rights apply only to the human being in relation to new perspectives, what would be the rights applicable to non-human beings? Could these entities be subjects of natural rights as we think and design them? These questions could be categorized as irrelevant if it were argued that there is not even real evidence that extra-atmospheric space would be inhabited by other intelligent entities. I think such criticism would be erroneous, and the appreciation that humans are the only intelligent entities that exist seems to me to be highlighted by an unbelievable arrogance. As a logical consequence generated by our own existence, we cannot exclude the possibility that there are other beings in existence, more or less advanced technologically, socially, etc. As a matter of fact, the human community is already confronted with experiences that a few

decades ago were unimaginable: the granting of an honorary citizenship to a robot¹¹, appearance of virtual worlds¹² etc. The boundaries of space will be probably overcome more and more often, although at this moment it may technically and politically difficult. But, in past days, political borders were thought to be almost intangible, yet today the national states themselves are becoming parts of a whole, globalized world¹³.

Under the above-mentioned conditions, arising from an increasingly accelerated social, economic, etc. dynamics, we believe that it is necessary to define in a strategic way a new branch of natural law that will form the basis of future legal and regulatory provisions, especially regarding activities that will be realized beyond the terrestrial space. This branch, which we believe could be called the universal law, in relation to natural law, should take into account a wider perception of external realities.

Of course, from a philosophical point of view, it is interesting to note that universal law, as we have tried to define in this article may not really be a branch of natural law, but on the contrary, natural law may be a specialized, adapted branch of a universal law that encompasses all aprioristic and perennial principles.

4. Universal law

Natural law brings into question the universal order that governs all people and the inalienability of the fundamental rights of the individual. In this sense, we believe that universal law can also relate to a universal order, but with an infinitely wider space that is more flexible than natural law. Under these circumstances, natural law remains circumscribed by its principles, legal relations that take place in the terrestrial, atmospheric etc. space, and universal law, having a wider applicability, could be used as a framework reference system on which to construct the future formal sources of law and future legal relations in extra-atmospheric spaces and future exploration and exploitation activities. Regarding the applicability of the law, another interesting aspect will be related to the application of the legal rules on board of operating and exploring ships, which will travel very long distances over long periods of time. In such situations, apart from the economic¹⁴ and social changes which will probably occur on these extraterrestrial sites, the applicability of international or national law may be limited by various impediments of a material nature and, in relation to these impediments, recourse to the principles of universal law may be considered. Among the concepts that can be considered universal law, we appreciate that the most important are those regarding reversibility and balance. Reversibility governs largely private law relationships. Thus, if the balance of legal relations is disturbed, the legal situation which appeared from the disturbed state of equilibrium can be subjected to full reversibility. Also, the equilibrium of law cannot be envisioned without resorting to the notion of systemic equilibrium. In general, physics has shown that the universe itself is a system that tends towards a state of equilibrium, and the system of universal law cannot have different characters. Also, the inalienability of fundamental human rights is established by the reference framework of natural law, so that in the absence of such a framework, their characteristics may be different. Can the fundamental human rights of non-human entities be applicable? If so, to what extent? We appreciate that the answer to these questions may be given at the time when the concrete situation will require it, but perhaps by reference to a broader framework of universal law, which encompasses more than natural law.

¹¹ <http://www.bbc.com/news/blogs-trending-41761856> (consulted on 1.10.2017).

¹² Alexandru Florin Măgureanu, *Crime and punishment in the new „Virtual World”*, „National Strategies Observer”, no. 2/ vol. 2, 2015, p. 166.

¹³ Emilian Ciongaru, *Transplantul Juridic, în Contextul Globalizării*, vol. „Impactul transformărilor socio-economice și tehnologice la nivel național, european și mondial”, no. 5/2015, vol. 5, p. 88.

¹⁴ In my opinion, the general principles of economy will probably be challenged by the limitations of this kind of environment and the limitations of resources and probably the management would tend to be more closely related to the cooperative system.

5. Conclusions

Natural law is one of the most important schools of thought within the system of law. Its principles are based on a natural order and to the concept of human rights of an absolute nature. Because of the new challenges of the modern society, by which mankind will most likely leave its primordial earthly cradle to explore the stars, the rules of natural law are no longer sufficient to accommodate the juridical needs of the society. Certainly, this will not happen immediately, but slowly in time, such incursions in extra-terrestrial space will become common, when referring to commerce and resource exploitation. Thus, designing and envisioning a conceptual current of law, broader than natural law can only be beneficial for solving the upcoming juridical difficulties arising from such endeavours. The concept of universal law, as it was described in this article is related to natural law, because from the traditional law schools of thought, the natural law is the only one that resembles universal law, although at this point is difficult to state if universal law should be considered a branch of natural law or the latter may be considered only a limited projection of the universal law. By establishing the premises for a new current, that relates itself more to the universal values, even physical ones, but not limited only to our perception of law, as we have it now, we may design a large and flexible legal framework which will constitute the basis for future juridical solutions. It may prove useful if we accept that beyond our limited knowledge and perception, different values and different configuring factors of law, others than the traditional ones, such as the human factor, the political framework¹⁵ etc. may appear that will change drastically the conception we have about our known reality. To this purport, the concepts and principles of universal law, based on universal values may serve as a true juridical lingua franca, that may be used also in the far distant reaches of the space beyond our Earth and help us in augmentation any communication endeavours that we make in the future. This function cannot be exercised by any of the other juridical schools of thought, namely the legal positivism, the historical school of Law or the organic theory of the law, because all of them have been constructed and designed to relate to our human community, living on the surface of the Earth.

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¹⁵ Mihail Niemesch, *Teoria generală a dreptului*, Editura Hamangiu, Bucharest, 2014, p.29.