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Law Addressing Uncertainty in the 21ˢᵗ Century

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ABSTRACT

Uncertainty – **psychology** – **law** is the founding triangle of the thesis!

Uncertainty about the past, present, and future, is a psychological fact of life since the beginning of times, springing from different sources. The self and the communities have developed and adopted numerous ways and structures to address its multifaceted discomforts in space and time, sharing many commonalities.

Due to hustling globalization and European integration processes, we are facing relatively new forms of uncertainty, which need to be addressed. This thesis endeavors to revisit the role and meaning of law in the 21st century, by holding firmly to <u>the stand that</u>: despite its urge to keep pace with the societal progress and development, law should maintain its functional role and protect the essence – the human need for certainty - and argues that the principle of legal certainty, the only principle to guarantee a state of optimal certainty, shall be enhanced to a constitutional level.

The thesis is conceived as a contribution to the ongoing debate on the harmonization of laws in Europe, especially harmonization of family law.

Key words: *uncertainty, liquid and risk society, psychology of law, legal certainty, harmonization of family law in Europe, matrimonial property law.*

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'The second lesson the Moon taught me is that,
even in mutability, there is stability.
Once upon a time the calendar was dictated by the lunar months: in
29 days, 12 hours, 44 minutes and 3 seconds the Moon,
with enchanting regularity, completes two new moons.
Reality, in its multiplicity and changeability,
stands on a stability that protects us,
and which we, indeed, define as 'laws'.

The fourth lesson is this: the Moon, however changeable,
always shows the same face, with the same craters and reliefs,
because its revolution and rotation are synchronised:
a rotation around itself lasts the same amount of time of a
complete rotation around Earth.'

(Alessandro D'Avenia - Apollo 11[1])

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[1]   https://www.corriere.it/alessandro-davenia-letti-da-rifare/18_novembre_26/alessandro-d-avenia-apollo-11-

INTRODUCTION

It is long I am fascinated with ***uncertainty***. It might be because I am not relatively tolerant to it and always felt the urge to know things in advance, plan and programme, as well as overthinking for fear of loss. (In my MBTI personality test I score high in judging, or as they say, I live by the motto 'be prepared'). What has really startled me, as far as I can remember, is the simultaneous existence of change and cohesion of everything in nature and in the universe, now maintaining harmony (the illusion of statics), now changing.

The topic of uncertainty remains little researched[2] about, and I have made my personal *étonnement*[3] with uncertainty and my 'strategies' to cope with or reduce it, the central topic of my scholar endeavours, this original thesis, placing the dilemma in the wide discourse of the role law should play in the 21st century.

The thesis's *main purpose* is to reconsider the meaning of law in the 21st century, by visiting its purpose, role and contribution in space and time, and contribute to the reconstruction of its narrative and understanding of place in the social environment, approaching it from a psychological perspective. The topic shall be seen from the lenses of social uncertainties and how law responds and shall respond to the contemporary challenges of the society. By arguing on why law exists and its all-times purpose and reconstructing its narrative and place in the social environment in view of the socio-psychological roots, the thesis reconsiders the meaning of law. By reconstructing the narrative, it hopes to help law re-find its existential role to play in the society today.

The main *research question* is: **what is the purpose and function of law in the globalization and European integration era and how it can best serve to this purpose?** The answer to this question is that: **law's main purpose or law's *raison d'être*, has always been and is to make certainty in social interactions and communication, in view of meeting the basic needs** through functions such as making order, guide or orient them, and balance individual and societal interests, in order to be effective to the all-time request for certainty.

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[2] Bammer, Gabriele; Smithson, Michael (Eds.) (2008): *Uncertainty and risk. Multidisciplinary perspectives.* Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), p. 3.
[3] Jeanne Hersch, L'étonnement philosophique, 1993. The idea was originally taken from Aristotle's Methaphysics: '*All men by nature desire to know*'.

The *aim* of the thesis is to construct a psychological and theoretical account or model of law as an optimal response to the social uncertainties of the European integration process. It has mainly a theoretical nature, though making use of empirical data and findings from the social sciences, in the endeavour to construct an account which brings law and psychology together, outside the realm of deviant behaviours[4], within the socio-legal research perspective, and hoping that, given my affective relations with both topics, the integrated study of both psychology of law or psychological jurisprudence will advance in a sub-discipline.

The research endeavours to make a few further contributions to the:
- Understating of uncertainty as a psychological phenomena and state;
- Understanding of law as a psychological by-product and its purpose and function today;
- Constructing of an account of legal certainty as a check-list against which laws and corpuses of law shall be tested, *a priori* and *a fortiori*; and
- Debate on the purpose and role of law today, and a practical one, to contribute on the relatively long debate on the harmonization and unification of private law in Europe, especially family law, by bringing a psychological argument in favour, trying to balance the cultural constraint argument opposing the harmonization of private law in Europe.

The *main influences* in approaching the topic(s) and constructing the thesis come from the:

a. Cultural dimensions of Geert Hofstede, whereby the idea of Uncertainty Avoidance is to be found. In my thesis the term is adapted to *social uncertainties*;
b. Social and positive psychology, which are at the heart of my academic and personal interests;
c. Sociology of law or sociological jurisprudence as the basis for understanding and approaching legal psychology or psychological jurisprudence;
d. Human rights;
e. Psychology or therapy of meaning, otherwise known as logotherapy; and
f. Literature.

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[4] The main materials found concerning law and psychology, pertain to the criminal law area. Therefore, I have made it a case to dedicate this research to psychology in the civil or private law, starting with family law.

The thesis' arguments are clustered in four chapters:

Chapter I targets at carving a 'architectural model display' of the landscape of the co-existence and twinning between human beings and the phenomenon of (social) uncertainty, providing a panorama of the terrain where law is and has to operate. It shall provide a model of comparison for law, by enlisting the sources of uncertainty and evidencing the commonalities of the mechanisms addressing uncertainty at the individual and social level, and the contemporary challenges to people's need for certainty. The chapter questions *what is uncertainty, what generates uncertainty or its sources, which ones should be prioritised, why we need to address uncertainty and, how do we, as individuals and, at the societal level, respond to uncertainties or, our strategies to making certainty*. Chapter I will place uncertainty in the private relationships in the cross-border communication and interactions.

Chapter II endeavours to evidence that reducing and avoiding social uncertainties was the main psychological or even unconscious reason behind law's emerging, that law has deep psychological roots and is the most optimal social mechanism to address social uncertainty, by making a comparison and enlisting its advantages. The chapter also analyse the barriers or disadvantages of law making certainty in the frame of intensification of cross-cultural interaction and communication and introduces the principle of **legal certainty** as a tool to guide and check the law in all its life phases.

Chapter III endeavours to construct an account of law, at the local and global level, with an emphasis on the EU level, evidencing the aspects of law, which should be empowered in order for law to better respond to social uncertainties and constructing a positive narrative of itself. The chapter will focus on the law-making process, as the cornerstone for guaranteeing certainty at all stages of law's life: law finding and law applying and, most importantly, the principle of legal certainty, given its paramount importance in making certainty in private relations nowadays, should get a priority place among the constitutional principles.

Law should guide and orient people in their actions and decision-making, indirectly motivating them towards pro-social behaviours and respect law and each-other, by protecting their need to belonging as a constituting pillar for people's meaning in life. The main policies should aim at general objective wellbeing (OWB) and, consequently, the law, which actualizes the public policies. While finding a positive, mindful and objective purpose for

every individual in the society is a difficult task, the most feasible is to concentrate on long-term structures of society, which do provide for a home and a sense of identity to all of us: the **family**.

In **Chapter III** I compare the models of Albanian and German legislations in making legal certainty, pointing at the case of Germany, with its plea of scholars in the field and advancements in the law-making process, as a leading model for the providing certainty and as a basis for other European countries models and as the main positive argument in the harmonisation of laws debate and process in Europe.

Chapter IV's main argument is that the most immediate area of private relations where law should intervene is family law, due to the importance family has and for the challenges it faces in the era of paradoxes of freedom of will and movement and uncertainties stemming from these. It concentrates on the role law should play with regard to families as the incarnation of the need to belong and experience stable and affectionate relationships. Given the perennial role of family in making certainty for the basic and inherent human needs, the high importance of the need to belong and experience qualitative affective relationships, the frailty of human bonds in the era of liquidity and risks and, the impact on health and wellbeing, law should aim at protecting these needs and create a home for people everywhere. Harmonization of family law, especially family law procedures regarding matrimonial property regimes, is of high importance for this basic human need and the achievement of law's purpose in this area.

Law shall become the new world religion, just like the one Comte[5] wanted to find, establishing and maintaining a positive outlook of life which is the basis for their pro-social behaviour. This can be achieved by:

- *Protecting the meaning of life through making certainty and making the world a home for everyone;*
- *Opening-up to and cooperate with other disciplines and making use of their findings not to loose its social function and be socially effective;*

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[5] Giddens, Anthony; Sutton, Philip W. (2013): *Sociology*. 7th ed. Cambridge: Polity.

- *Being made by close cooperation between legal experts and scholars who have the knowledge and no interest to pursue; and*
- *Thinking globally but acting locally and/or regionally, in order to ensure a greater possibility for effective remoteness to ensure impartiality and potential justice and remedy in case of national or local irregularities.*

Socrates and Aristotle sought to find the universal in the sensible things and define them, the immovable mover, whereas Plato, influenced by the Heraclitian, which axiomed that all sensible things are changing and there is no knowledge about them, insisted on the commonalities of unchanging things, the Ideas.

This is what I wish to do: find the commonalities in ideas, the ideas threading human beings wherever they reside, yet firmly believing that human beings, like all entities on Earth, are threaded by the same principles and wish-ends. And this is, in my firm believe, the scope of psychology, from which I have borrowed from in this work, to explain that the commonalities of the human beings require for common answers and these common answers shall be granted by law.

My long-term goal is to construct a sort of 'Vitruvian man' and archetype of law: the harmony – the golden ratio and the essence. This time, with this thesis, I am concentrating more on the role of law in protecting. In my further academic endeavors, I shall focus on the role of law in ensuring human agency and accession to it in realizing their needs!

METHODOLOGY

The thesis is the by-product of interdisciplinary research into law. The main prospective is the *socio-legal research prospective*.

The main methodology employed for carrying out the research is *auxiliary multidisciplinarity:*[6] the main problem (the research question(s)) is defined by the legal discipline (the purpose and role of law in the era of globalization and European integration), demanding mainly for a legal response, but with inputs from other empirical disciplines (in this case from psychology) with their justifications/arguments which are external to the legal framework but necessary to the main argument. The aim is to establish a psychological account of law within the socio-legal prospective, in order to explain the raison d'être of law and its role in the society of the 21st century of regionalism and globalism.

The main method employed for acquiring the knowledge and preparing the thesis was *literature review*. It was the best method to understand all the developments in different disciplines and what were the missing pieces concerning the key words of the thesis: **uncertainty – psychology - law**. There was a strong desire on my side to understand law and quench my thirst for general understanding and theorizing of concepts and phenomena, so much a trait of my generalist perceptive and understanding learning and performing style. The missing piece was a proper psychology of law and/or psychological jurisprudence, and this caught my eye because of the knowledge and love I have for psychology and an unconscious filter or lens to always see things from this perspective. In the existing literature, the only connection between psychology and law I could find was the one using psychological findings in the courtroom in criminal cases or understanding deviant behavior or mental health issues. It became my personal challenge to construct with this thesis a psychological account of law from which to study law as a social phenomenon, based on the sociology of law or sociological jurisprudence theories/models. A psychological sub-school of thought is missing within the socio-legal school of jurisprudence, and psychology should become a nourishing source for the law in theory and in action, given that human psychology is the basis for the existence of the entire social environment. If we really want to address

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[6] Van Klink, Bart; Taekema, Sanne (Eds.) (2011): *Law and method. Interdisciplinary research into law*. Tübingen: Mohr Siebeck (Politika, 4), p. 4.

social problems, we should first and foremost focus on psychology or the why or raison d'être of all social constructions and phenomena. And find the solutions.

Therefore, the approach to law in the thesis is psychological and is both from a jurisprudence and psychological point of view, given my knowledge of the two languages of law and psychology. The model is mainly based on the sociology of law and sociological jurisprudence, and I have to emphasize that the two of them do make extensive use of psychological concepts and practices. Psychological jurisprudence should be more on the discussion about human values and human rights, whereas legal psychology more on law in practice: the effects of law in people life and how to improve itself as a communicator. They should nourish each other.

The concepts are borrowed from theoretical psychology whereas the empirical data were 'borrowed' from experiments and other psychological research methods used by renowned psychologists and proponents of theories, in order to keep the data as professional and reliable as possible. Induction/deduction was employed. Observation of the phenomenon of uncertainty became a daily routine, mostly happening unconsciously. The empirical data on uncertainty reduction and avoidance was provided by the studies of psychology and sociology on uncertainty and family such as the studies of Hofstede (in turn making use of prolific data from extensive researches), Giddens, Beck, Bauman, etc. Interviews were held with law and legal professionals in the academia, as well as law practitioners, though a couple of interviews with social scientists and judges could not be made.

The comparative aspect of the study is low, confining to brining studies from different cultures, but trying to maintain coherence with the evidencing of commonalities. The first intention was to produce a comparative study of my own, based on a comparative research between different legal systems, but since I felt the absence of a psychological approach to the study of law, the objective to do that is left to a next phase. I intend to make a comparative study on how law influences in practice people's behavior with its purpose to make ex-ante certainty, and test whether the deductions of my psychological account get validation from the data and the interpretation.

Legisprudence is a new account in legal theory, which proposes a rational argumentation approach to law and the study of law making as the study of law applying by judges. I have

tried to make due mention to its place and importance in the endeavor to understand law's place and role, since the thesis strongly supports the employment of argumentative reasoning in the lawmaking process. There is also a new paradigm flourishing amidst legal theories, I have discovered very recently about: the therapeutic jurisprudence.[7] It focuses again on criminal law and mental health issues.

Being a Universalist and naturalist, believing in some inherited human features, as well as constructions developed in the process of human evolution, my approach to the key concepts has been this one. Being a Universalist I see the strategies and structures to cope with or address uncertainty as having common unconscious roots and functions. Being a Universalist, I strongly believe harmonization is the best answer to law's adaptation to the contemporary challenges.

Life in Germany gave me lot of certainties and high security but for a short period of time. Living in a highly uncertain country like my home country, with consequences on my physiological and psychological life, I have completely found myself within the descriptions of Hofstede for high uncertainty avoidance countries as well as persons. In the European integration process, I feel uncertainties on the future of my country as well as myself.

I left myself open to many kinds of information and knowledge, from different social and behavioral studies, so I could approach the topic holistically, at least in my mind. I always struggled to see the big picture and bring something new. I kept questioning myself every time: am I brining a new image or reconstructing an existing one? Am I suggesting new relationship models? Is this easing the burdens somehow? I have tried to include opposing views in order to avoid as much as possible personal biases and I need to make it clear that my observations and approaches are purely psychological or legal, not political.

My constant concern during the preparation of the thesis was the non-repetition of things already said or explained in detail in other author's work, do a proper work with the references, which, I am highly aware, may be a source of ambiguity, and to keep it as close to the idea of an original work as possible. I hope I have managed somehow to provide an innovative approach to law.

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[7] https://en.wikipedia.org/wiki/Therapeutic_jurisprudence

In writing the thesis I was guided by 2 rules:

- Keep it as simple as possible: I usually walk with the principle of 'economy of words' and a laconic style of writing. Time is money!
- Stick to what I know best and cherish from the disciplines of law and psychology and some other social sciences; although it took me circles and puzzles to get things together, hopefully in an optimally integrated fashion.

A later intention is to enlarge the audience into a lesser expert one. I hope this work is to be considered also in the studies of social and positive psychology, and why not considered in the contemporary study of sociology (of law).

I am aware of the lack of data regarding psychology and law; therefore I hope that in case any piece of knowledge deemed important is missing, it would be kindly understood.

I tried and strived to think of all point of connections between topics. And as I was revisiting the meaning of my life, my family was a very important part in making me feel that I belong somewhere; I know where my home and my anchor reside. I started with a family encountering.

I have arrived at classifications as all researchers and scholars have – arbitrary. As a Universalist I am naturally inclined to see the patterns, and discerns the similarities from a holistic point of view. This is how different accounts and approaches have been established. And how science is advanced, through imagination and based on others work.

As it will be made evident several times throughout the thesis, it is difficult to draw the line between the internal and the external, their continuation, the physics and the metaphysics. The idea is best rendered by Italo Calvino in his 'Six memos for the Millennium',[8] when comparing between lightness and weight, to conclude, through examples from myths, raw material and technology, where the soft meets the savage,[9] that that whichever has weight is in essence light. That even the most sophisticated organisms are made up of their particles,

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[8] Calvino, Italo (1988): *Lezioni americane: sei proposte per il prossimo millennio*. Mondadori, 2016.

[9] Just like the modern sculpture of Maman in front of the Guggenheim Museum of Modern Art in Bilbao.

which in turn are made of atoms (from Greek indivisible) - invisible and light. I face this challenge every time I try to categorize things and items, since I am quite fund of order and organizing things in files. I end up reorganizing them every time; every time to find out that the many overlaps.

Self-reporting and observation and introspection are highly made use of. I have studied social sciences and done many psychological tests to better understand myself. I do not like very much uncertainty and I am not very tolerant to it. I have been the first subject of my research for writing this thesis. It hasn't been easy at all; we, human beings, are prone to errors and self-decisiveness when it comes to ourselves, and this is justifiable in the absence of pre-set meanings. We look for cohesion and integrity within us, and our self-image demands positive confirmations. I was the first to introspect, confront my experiences with information on books and lifeline and psychological tests, and look from the outside, in an outer and holistic way. I always questioned myself whether this is what I would want for myself or do. I wanted to make it as much real as possible, not losing touch with reality. I wanted real life to be brought inside and through this thesis as much as possible.

Last but not least, during the final phase of the thesis' preparation I was lucky enough to work at the Ministry of Justice in Albania, as an adviser to the Minister, in the framework of LEAD Albania programme.[10] It was a period of heated legal and political debate due to the justice system reform undergoing the country. The knowledge and insights gained are moderately included in the thesis. The training from the prestigious Center for Creative Leadership in Tirana and Brussels, where I could learn and test myself, among others, on the changing style indicator (CSI), was an added value to the part on strategies to cope with uncertainty in times of change. The CSI should be introduced and the psychological tests should be administered to measure the tendencies of the people and societies in times of change and the use of law.

The literature I have browsed so far and during all these years has been vast and many of them, pertaining to the popular science as well, though not included, have proven to be of immense help and service to me.

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[10] http://www.aadf.org/project/lead-albania/

The backbone of the literature is made of 3 books. Namely:

1. *Culture's consequences* – by Geert Hofstede
2. *Social psychology* – by Aronson, Wilson and Akert; and
3. *Sociology* - by Anthony Giddens

These are books written by acclaimed and renowned international scholars and what's most important, they provide for a wealth of studies, sources and references from all disciplines. They are multi-disciplinary and multi- and cross-cultural. I have made them personal, they reside at the forefront of my library and are consulted every time and on all issues.

The study of the concept and phenomenon and state of uncertainty required a multidisciplinary approach. The strength with this approach rests with what has been accurately described by Hofstede in his Cultures' consequences:[11]

> *'.... Often a level science and an aspect[12] science need to cooperate in order to resolve a particular problem.*
> *The division of labor among the social sciences has been a practical necessity, but it has had the unfortunate side effect of overspecialization. Adherents of on science communicate with colleagues only; they build a parochial loyalty to their field, even to certain paradigms within their field. Consciousness that the social world exceeds the field of any one science is lost.*
> *...*
> *Unwanted effects of overspecialization include compartmentalization, restriction of inputs, restriction of methods, and triviality of outputs.*
> *....*
> *Crossing disciplines is essential for real advance.'*

Furthermore, as it will be evidenced during the section on law's uncertainties, overspecialization leads to more uncertainty and decreases certainty from and trust in laws (and from science in general).

To my understanding, the problem with transplanting laws or giving expertise to making laws in developing countries, such as my country, is a problem of restriction of inputs and triviality of outputs. In Hofstede's words, restriction of inputs implies the 'rejection of certain

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[11] Hofstede, Geert H. (2001): Culture's consequences. Comparing values, behaviors, institutions, and organizations across nations. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 20.
[12] Hofstede refers to the division of labor among social sciences: level sciences: Anthropology, Sociology, Social psychology and Psychology, and aspect sciences: Management, Political science and Economics.

types of information' whereas triviality of outputs means that 'entire fields survive only on solving only the problems generated by the inmates themselves, without demonstrable transfer of ideas to the larger social reality.' In Albania, the election code is made and revised every time there are elections in the country, with the assistance of the international community. This law every time receives the benediction of the internationals, only to end up producing contested elections and being blamed by the internationals later.

One of the questions that have always accompanied my thinking has been: do they, the scientists and the scholars, disagree with each other because they truly understand each other? That is what I have not perceived from day one about lawyers, both at the academic and the practical/professional level, and I am glad I get to know a few disciplines so that I could assess myself their differences.

Being acquainted with social sciences and law and having traveled the whole Europe and visit it with the eye of a researcher, I can say that I am less judgmental and able to see patterns of thought and behavior. The feelings, discomfort and the subtle processes of my psyche to address issues have been under scrutiny all the time. Further on, being against human centrality and xenophobia, it has reinforced my idea that no culture is better than the others. Last but not least, as a person strongly inclined toward certainty, this is first and foremost my personal struggle, battle and case. All of this, I strongly believe, have given me more of an opportunity to be closer to the Archimedean point, i.e. to consider things from a more holistic point of view.

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I also wish to wholeheartedly thank people at Max Planck Institute for Comparative and International Private Law in Hamburg for their high professionalism. Those months spent on reading and intellectually healing at the Institute, surrounded by people of different cultures and walks of life and endless precious books, latently marked my professional ad personal growth. I felt privileged I could meet and have profound professional talks with **Prof. Dr. Dr. h.c. mult. Hein D. Kötz**, **Prof. Dr. Dieter Martiny**, and **Prof. Dr. Anatol Dutta** regarding comparative and family law issues.

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The 3 German professors – with their attitude of teachers of old wisdom, quietness, and models - made me feel at home and confortable with myself and with the distance between our knowledge and experiences. I certainly retain myself very lucky to have at least met them, let alone the great and unique opportunity to have discussed and share thoughts with.

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I want to thank people at the **Centre for Socio-Legal Studies at the University of Oxford** for hosting me, and the professional talks I had the pleasure to hold with. The high mental and emotional state I found myself within old libraries, my sanctuary of spiritual peace, such as Duke Humfrey's Library from the 15th century, surrounded by old books touched by the hand of time, is an indescribable feeling.

I wanted this work to be the best work I could afford to produce so far, given the many challenges posed by the topic and the methodology applied. That is why I did my best to

'This is our true state; this is what makes us incapable of
certain knowledge and of absolute ignorance.
We sail within a vast sphere, ever drifting in uncertainty,
driven from end to end.
When we think to attach ourselves to any point and to fasten to it,
it wavers and leaves us; and if we follow it,
it eludes our grasp, slips past us, and vanishes forever.
Nothing stays for us.
This is our natural condition, and yet most contrary to our inclination; we
burn with desire to find solid ground and an ultimate sure foundation whereon
to build a tower reaching to the Infinite.
But our whole groundwork cracks, and
the earth opens to abysses.'

(Blaise Pascal)

CHAPTER I   **UNCERTAINTY IN PRIVATE RELATIONS AT THE LOCAL AND GLOBAL LEVEL**

'God, how I ricochet between certainties and doubts.'

(Sylvia Plath)

I. 1   Introduction

Uncertainty about the future is a basic fact of life[13] and we are conscious about it.[14] Human beings live in (perceive and experience) uncertainty, which stems from different internal and external sources. Keeping Kipling's questions[15] always in mind, the chapter addresses the following questions:

- What is uncertainty, including language attached to the phenomenon?
- Where does uncertainty stem from or what generates uncertainty?
- Why is it important to understand and address uncertainty? and
- How is and how shall uncertainty be addressed?

The chapter aims at making an exhaustive panorama of the faces the phenomenon of uncertainty has taken in the interaction between human beings and nature and human beings with each other and providing a model display of the common traits of individual and social mechanisms in coping with it. By doing so, the chapter intends to evidence why addressing uncertainty through social mechanism is of paramount importance.

I. 2   Sources of Uncertainty

I. 2. 1   Existential Uncertainty

The history of humankind started in uncertainty and it continues to generate itself into more uncertainty. Human beings were brought into this world with the instinct to survive and

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[13] Bammer, Gabriele; Smithson, Michael (Eds.) (2008): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), 3; Hofstede, Geert H. (2001): Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 145.

[14] Hofstede, Geert H. (2001): Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 146.

[15] https://www.kiplingsociety.co.uk/poem/poems_serving.htm

ensure continuity of its species, without a book of instructions or a book of truths where to search for eventual answers or to make reference to. Our universe and the world lack a known author (the creator), its principles and lessons (the book of instructions), and its ultimate authority. It might be there is no author at all and no definite and established set of truths and principles; not even a finished project for the universe, the world and humanity, as Kierkegaard would have said[16], so we are left with the burden to create our own life, give meaning to it and even create ourselves.

This lack of certainties leaves us with the liberty to construct the idea about the world we live in, but in turn, it is but another source of uncertainty. Existentialists saw this freedom as a gift, as the one specificity distinguishing us from the other species, enabling us to anticipating our actions and consequences and choosing among them. This is our biggest challenge too, as life has to be invented and we have to occupy our freedom and we have to answer to the existentialist dilemma stemming from our emerged consciousness and which poses a whole set of uncertainties: why are we here and where are we going? What happens when people leave this world? Why should we live and make possible the continuation of our species?

Last but not least, being aware of our mortality is both a source of certainty and uncertainty, as it said that death is the only certainty we have.

I. 2. 2 Nature's or Environmental Uncertainty

Earth, as we know it, is a second source of uncertainty: it is unknown to us. Science has done innumerous discoveries and yet there are many things unknown or partially know. Therefore, life on earth is marked by the probability or possibility that a natural event/phenomenon occurs and the impossibility to prevent and totally control the nature or the natural environment. It is also difficult to say whether and/or to what extent Earth or nature or the environment is our friend or our enemy. It has given us the sources of survival, and yet challenges us with natural disasters.

Furthermore, since we all need to turn to the environment to fulfill our physical or survival needs, our encounters with the environment are a source of uncertainty as to how much and

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[16] Soren Kierkegaard, the 19th century Danish philosopher is known as the father of existentialism.

how the environment will respond to our needs and to what extent we are using Earth's resources beyond the reparable.

In economic theories, the concept of the scarcity of resources is an axiom and this has played a major role in shaping the perceptions and behavior of people. It is a certainty, which entangles a whole lot of uncertainties; since we are bound by the constraint to chose and make decisions. Choosing and making decisions implies leaving one or more options out and, as psychological research maintains, making decisions, especially those who create the illusion of irrevocability,[17] create a strong state of cognitive dissonance, which affects our (mental) health. The more permanent and less revocable the decision, the stronger the need to reduce dissonance.[18] It also entails a strong sense of risk aversion, as, according to this theory, people are prone to lose a bigger possible gain than a certain present possession.

Trying to dominate the nature and turn it to our own benefits has made us weak. As Hume maintains, human beings cannot meet their needs by themselves. They are not self-fulfilling creatures and their physics is fable. Therefore, human had to gather/converge forces to meet the needs. This is as well one of the main postulates of the evolution theories.

Earth and human beings are entangled in a cycle of avoiding/reducing and creating more uncertainties.

I. 2. 3 Social Uncertainty

What I call a third source of uncertainty are the 'social uncertainties', or the uncertainties that are generated from the very fact of our co-existence as lonely and social beings at the same time (hereinafter referred to as 'uncertainties', save otherwise indicated). We have created (consciously and unconsciously) our own world of auto-references: the inner world or the image of self and the other(s), and the outer world, the social world (in collaboration with or without the natural environment) and the social awareness. Uncertain about the author and its ultimate work and project, people have become the author of the world they inhabit, discovering the truths to be included in the books of life, world, and the universe, and have established above themselves the authority of knowledge and regulating.

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[17] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8th ed., new internat. ed. Harlow: Pearson, pp. 172-173.

[18] Ibid., p. 172.

I. 2. 3. 1   Uncertainties of the Self[19]

Human beings are prone to errors and not fully rational agents. Psychological research on judgment and decision-making under uncertainty maintain that human beings are: i) either using heuristics or mental shortcuts to reason or make decisions under uncertainty, falling prey to biases,[20] sending and/or receiving thus the wrong message; ii) either bounded in their rationality by the limits in time and mental capacities;[21] or iii) prey to their emotions, preferences, likes and dislikes, when reasoning and making decisions.

The subconscious and the unconscious (the bottom part of the iceberg) are internal states and source of uncertainty in human relationships.[22] Even in the present we are unaware of many thoughts or certain why we think the way we think or feel the way we feel.[23] It takes a very conscious and thoughtful and difficult introspection to distinguish thoughts – thoughts, emotions – emotions, thoughts-emotions.[24]

Mental Schemas and Programmes

Human beings are programmed to use mental schemas and mental strategies when making sense of the self and the world. These schemas and strategies serve to fill in the gaps or in the blanks and therefore, be probabilistic and lead us to errors, or even be counterproductive. I will be discussing about these into more details further ahead in this chapter.

People do like to rely on automatic thinking or personal theories or even their 'gut feelings', because this implies sparing time and efforts/energy by making judgments rather than

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[19] Or as Plato is said to have named this communication 'the mute talking of the soul with itself'.

[20] A view maintained by behavioral economists such as Tversky and Kahnemann (1974).

[21] Self-image is a concept highly employed in social psychology and implies the image that we hold about ourselves in the social world. Since this image has to be positive, the message we might be inferring might be the wrong one or might deceive the real meaning. Self-decisiveness is highly employed by our unconsciousness to maintain such a positive view of us.

[22] The thesis in neither underestimating, nor overstressing the importance of unconsciousness. I recognize the importance of both unconsciousness and consciousness.

[23] Smithson, Michael (2008): *Psychology's ambivalent view of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 205–217, p.209. Our emotional state is often characterized by errors in the attribution of feelings – how we feel – and the source of a given emotional state. Furthermore, we cannot anticipate feelings, i.e. we cannot know how we will feel about something at a certain point in time.

[24] We don't know if it is the physical, which leads to the psychological or vice versa. They say anxiety has a physiological basis, but do we feel anxiety because there is a change in our chemical balance or it is the situation that causes it? Is it us or the situation? The nature or nurture?

thinking or reasoning in a controlled way. And as Jung would have said: 'Thinking is difficult and that is why most people judge'.

Yet, even if we could make best use of our controlled thinking or reasoning, would be address uncertainty fully? 'People are not perfect thinkers[25]. We are prone to mistakes and have limits[26]. And, as Parmeno says to the love-sick Phaedria in Eunuchus, 'If you think that uncertain things can be made certain by reason, you'll accomplish nothing more than if you strived to go insane by sanity'.[27] As it may be well evidenced right in here, I have already created a lot of uncertainties by brining in all these paradoxes.

According to social psychologists, there are two main motives, which drive our construal of the social world or the reasons behind which we construe our world the way we do: the need to feel good about ourselves, and the need to be accurate.[28] People have a strong need to maintain reasonably high self-esteem – that is, to see their selves as good, competent and decent.[29] We need to see ourselves under a positive light.

These motives may clash. This is a source of uncertainty and dissonance. The need to feel good about our decisions can fly in the face of the need to be accurate and this can be catastrophic.[30] According to Leon Festinger, it is precisely when these two motives pull in opposite directions that we gain our most valuable insights into the workings of the human mind.[31] This is behind the 'the means justifies the ends'.

We are also 'perceptually prominent'[32], limited by what we can see and hear; due to the barriers in environment and because we can focus only in one portion of space at a time. We

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[25] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 58.
[26] Ibid.
[27] https://books.google.al/books?id=mUojgaoqKf8C&pg=PA21&lpg=PA21&dq=if+you+think+that+uncertain+t hings+can+be+made+certain+by+reason+eunuchus&source=bl&ots=wfWGy7w9uz&sig=ACfU3U0qPvBwq6 UGOZqhofifaDR7HYGu4g&hl=en&sa=X&ved=2ahUKEwizuZ7gjrPnAhUFU1AKHVlzDV0Q6AEwAnoECA kQAQ#v=onepage&q=if%20you%20think%20that%20uncertain%20things%20can%20be%20made%20certain %20by%20reason%20eunuchus&f=false
[28] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 14.
[29] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 15.
[30] Ibid., p. 14.
[31] Ibid.
[32] Ibid., p. 106.

almost never know all the facts we need to judge a given situation accurately.[33] This is a source of uncertainty. 'Even if there were a way to gather all facts for each decision, we lack the time or the stamina to do so'.[34]

Many concurring thoughts and emotions and the difficulty in reading our thoughts and emotions.

Just like with music, again to be discusses a little later, where the creation of chords, which give the impression of one note or instrument, to an inexpert ear is difficult to distinguish and understand, so to us, our many concurring thoughts and emotions are not easy to be discerned. We also are not always aware of the origins of our own responses and feelings' (Gilbert, 2008; Nisbett & Wilson, 1977; Wilson, 2002, in Aronson et al., p. 5). Not many of us have the proper education and trained 'eye'.

Self – deceit is another source of uncertainty about the self, and as we will see later, this is the most common error when making judgments about ourselves or understanding ourselves, we have the need to see it as good and positive. When it comes to making sense of our own selves, we stand on our own way.

We cannot read other people's minds. And even if we could, would we understand and figure things out? People often experience what in the language of psychology is introduced as 'affect blend':[35] mix facial expressions, and this is, most of the time, unconscious on their side, since it is classified as non-verbal communication.

I. 2. 3. 2   *The Necessity to Living Together*

Human beings are auto-regulating beings: biologically and socially, but they are need-based beings and in order ensure self-preservation, we need to interact with the environment and with each other.

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[33] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 17.
[34] Ibid.
[35] Ibid., p. 95.

Aristotle called human beings a *social animal* with a need to stay within a herd with others alike. We are social beings and we can only try to infer since when. Hume, later on, would speak of the impossibility to survive alone in a world, which is inimical to us;[36] this is why we need others. The human species, Hofstede says, should undoubtedly be classified with the gregarious animals.[37] *Homo sociologicus* is another metaphor employed to describe the social nature of the human being.

Living together is a necessity crystalized in the human evolution process. In Hofstede's study on cultural dimensions, individualism vs. collectivism are the two poles of one dimension: the relationship between the individual and the society: in individualist societies, the society benefits if the individual benefits, while in collectivist societies, the individual benefits if the society benefits. Thus, the 'difference' is the starting point, whether it is the individual or the society. As it can be seen also in the Chinese tradition of Confucianism, where 'collectivism implicitly assumes that maintaining the group's is the best guarantee for the individual'.

Gregariousness certainly is a feature of the human nature, as it is the need or perceived need of independence', Riesman et al., would say in their work 'The lonely crowd'[38]. Human beings are lone beings and this is evidenced by the fact that our cognitions and emotions are personal and we lack the ability to telepathy and empathy. Our thought and emotions are conserved within a physical being distinct from the others.[39]

This existence dichotomy of being alone and being with others has proved to be a difficult one most of the times. Human history is a witness of it. The concept of the state of nature was highly pervasive in the natural rights philosophers of the 17th and 18th centuries, the state of human beings before organized societies and rules. Hobbes and Hume emphasized the savage and conflicting nature of the human being and the war of all against all. In the absence of empirical proves as to the existence of a state of nature, we can compare data from ethology and the history of the mankind fraught with wars, conflicts, and enraging acts, epitomized by the famous Latin proverb, mainly attributed to Hobbes, *Homo hominis lupus est.*

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[36] This is a theory he unfolded in section 2 'On the origin of justice and property' of '*A treatise of human nature*' (1738).

[37] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 210.

[38] Ibid.

[39] Freud would speak of the id and the ego as the separating line between the rest of people and us.

Co-existing or co-habiting is a necessity in order to meet and gratify our needs.

Our expectations, which are connected to the roles created in society, not always are met by the others, who deviate from their roles and responsibilities. And this is one other source of uncertainty.

I. 2. 3. 2. 1 Human Interaction and Communication

The sources of self-uncertainty maintain themselves in the process of human interaction and communication necessary to meet our needs. For this reason people organized themselves into societies and later political communities and nation-states. Their continuous interactions are acts of communication, as everything we do or do not do, communicates something.

We are both senders and receivers of messages and communication is oriented towards the receiver. [40] As such, we comport our sources of uncertainties, stemming from our psychological barriers and how we construe the world around us. These are uncertainties from the sources of the message.

Uncertainty comes also from the message itself. Messages are symbolic, i.e. they hold an agreed meaning, which needs to be decoded or efficiently understood by the receiver, and the sender should make optimally sure the meaning is effectively understood and shared by the receiver. Meaning is always prone to interpretation. Every interaction occurs in a specific environment or situation, which has its impact on the message being communicated. Especially when this environment or situation is new or foreign, we are exposed to great levels of anxiety and uncertainty.

Messages are not only verbal or voiced. Most of the time we do employ non-verbal communication. Perceptions and interpretation are all barriers to delivering and receiving efficiently the message communicated. How we perceive other people influences a lot our communication. What we attribute to this person changes the way we see this person and the communication approach.

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[40] The sender of the message, the receiver, the message, the means of communication and the interferences or barriers to this communication constitute the minimal communication model. Each of these constituents brings its own uncertainties to the process.

We should also bear in mind that communication is a multi-source process, meaning that the messages we receive are multiple and through multiple channels. Conflicting information is perceived and responded to as ambiguity and conflicting sources are perceived as less credible or knowledgeable than ambiguous sources.[41]

Uncertainty may come also from the channels and means of communication. Interferences such as physical or psychological or inter-cultural barriers often come in the way to realising effective communication. The variety of definitions about a concept or phenomenon is a source of uncertainty.[42]

I. 2. 3. 2. 2   The Other

The German sociologist Georg Simmel introduced the concept of the *stranger,* the newcomer who is here to stay, but different from the outsider and the wanderer. William Gudykunst, an eminent expert in intergroup communication, borrowed the concept and placed it as the central subject of his anxiety/uncertainty management (AUM) theory. The stranger, according to his theory, is everywhere, not only in foreign countries, and in (intercultural) encounters, strangers experience both anxiety and uncertainty; they don't feel secure and aren't sure how to behave.[43] The stranger is the unknown, is the probability of expectations. In any new interpersonal situation, strangers are hyperaware of the cultural differences and an attribution error occurs.[44]

In-group and inter-group communication has its own barriers to it. Prejudices and stereotypes become barriers in the sense that they are the barriers to tolerance in encounters with people from other cultures, in the cross-cultural communication.

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[41] Smithson, Michael (2008): *Psychology's ambivalent view of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 205–217, p. 209.

[42] Smithson, Michael (2008): *The many faces and masks of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 13–24, p. 14.

[43] Nishida, Tsukasa (2015): *Anxiety/Uncertainty Management (AUM) Theory*. In: The International Encyclopaedia of Interpersonal Communication: John Wiley & Sons, Inc., p. 427.

[44] They tend to overestimate the impact of culture on behavior and underestimate the personal differences.

Furthermore, the other might not be telling the truth and trying to divert our thinking and understanding, being afraid of others' judgment and their reaction.

Last but not least, we are, we receive in continuation conflicting messages in the society and same applies with messages from our own experiences, such as: 'birds of a feather flock fly together' and 'opposites attract'. Now, with the new age 'wisdom', the positive attracts the positive and the negative, the negative.

I. 3   Uncertainty

Summing up and, congruent to, the logic of the first section, uncertainty is: a ubiquitous phenomenon in space and time and it does not matter whether we use this or other terms in different disciplines or cultures: the most important thing is the *content* of the concept and our perceptions and agreement about it.[45]

According to Dale Brashers[46] '*uncertainty exists when details of situations are ambiguous, complex, unpredictable, or probabilistic; when information is unavailable or inconsistent; and when people feel unsecure in their own state of knowledge in general'*.

Uncertainty is an objective fact (the external aspect independent of our observations or a statement,[47] information, event[48] or situation being completely unknown or partly unknown or doubtful) as well as a subjective one (our internal state[49] or how we perceive and experience this objective external state), of life.

As an *objective fact*, uncertainty is, first of all, the state of the world and of the universe.

The world, as the universe, is a work in progress. Theories on universe evolution maintain that it keeps expanding, constructing and deconstructing. Therefore it seems not to have a definite configuration.[50] Geoffrey Wilkinson, in his work 'Certainty, that thing of indefinite approximation: a quest through lives and literatures' (2012), analyses the scientific work done on the very basis of world existence, the atoms and sub-atomic particles, deliberates that there will always be uncertainty, even in the smallest particles of life, despite Einstein's and other scientists' efforts to predict their movement, location, speed and direction, through

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[45] Smithson, Michael (2008): *The many faces and masks of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 13–24, p. 15.
[46] Brashers is one of the proponents of the Uncertainty Management Theory, in Redmond, Mark V. (2015): *Uncertainty Reduction Theory*. Iowa State University Digital Repository (English Technical Reports and White Papers, 3), p. 30.
[47] Lindley, D. V. (2006): *Understanding uncertainty*. Hoboken, N.J.: Wiley-Interscience, p. 12.
[48] Ibid.
[49] *Oxford Advanced Learners Dictionary*, Oxford University Press, 2010, 1675.
[50] The history of the universe and the world is a succession of chaos and order.

quantum mechanics and physics[51]. A precise order in the universe cannot be proved! The universe *per se* is uncertain!

- **Uncertainty is the unknown**!

  The world was unknown to us in the beginning of our time and the human history is a quest for the ultimate truth(s) of the world and how to communicate with it. Some things are simply unknowable;[52] some unknowns result from the lack of appropriate methods or tools to find things out[53] or we are not mature enough to approach certain issues in certain ways; some simply result from the lack of interest in finding out.[54] Socrates' famous quote 'The only true wisdom is in knowing you know nothing' and Aristotle's "The more you know, the more you know you don't know", best '*wordify*' the truth about our state of uncertainty about the world. Böschen and Wehling (2004) use the term 'nichtwissen';[55] ignorance is another term for absence of knowledge (Moore and Tumin, 1949; Smithson (1985 and 1989) and Merton (1987).[56] Knorr-Cetina uses the term 'negative knowledge' implying the knowledge of the limits of knowledge, mistakes in attempts to know, things that interfere with knowing and what people do not want to know.[57] Uncertainty is the impossibility to know where we are going.

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[51] Known as the Heisenberg Uncertainty Principle.
[52] Bammer, Gabriele; Smithson, Michael (Eds.) (2008): *Uncertainty and risk. Multidisciplinary perspectives.* Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), p. 5.
[53] Ibid., p. 4.
[54] Ibid.
[55] Cited in Smithson, Michael (2008): *The many faces and masks of uncertainty.* In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 13–24.
[56] Cited in Ibid., p. 15.
[57] Ibid.

- Uncertainty is **doubt, ambiguity**, **probability** and, absence of clarity!
- Uncertainty is the **unpredictable** and the **unforeseeable!**

  Uncertainty is when we do not have complete information or knowledge about a situation or phenomenon and we do not know which of the outcome(s) will take place. The answer is yes or no. No percentage is attached to uncertainty. It is the 50%, or the possibility that something happens or not. And there is no timeframe attached to it. There exists a confusion regarding whether uncertainty is risk and risk is uncertainty. As Hofstede righteously points out, uncertainty avoidance should not be confused with risk avoidance. Despite the fact that they are not the same thing, in my judgment, risk is part of uncertainty. Risk is the known face of uncertainty, the objectifiable, quantifiable, and measurable. In economics the Knightian[58] uncertainty is a known axiom, holding that one cannot be certain about uncertainty. Uncertainty bears the risk of something happening or not.

- Uncertainty is the **state of absence of the possibilities** to meet the basic subsistence needs!
- Uncertainty is the **probability of loss** of what we do or perceive we possess and loss of control over one's life. Loss is always perceived or experienced as a negative state, jeopardizing our most intrinsic values!

As *a subjective fact*, uncertainty is an internal state, linked to our cognitions (how we *perceive, interpret* and *use* uncertainty and uncertain situations/facts) and emotions (how we *experience*, physically and psychologically, uncertainty and uncertain situations/facts).

We are the observers as well as the experiencers of this state of objective/external uncertainty, although, different people perceive uncertainty in different objects, different degrees[59] and from different sources at a point in time, depending as well on the situation.

Uncertainty is cognition, which involves mental processes: perception, interpretation, memories, attention, judgments, evaluations, anticipations, expectations, and decision-

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[58] Frank Knight wrote about the topic in his book of 1921 "*Risk, uncertainty, and profit'*.
[59] Lindley, D. V. (2006): *Understanding uncertainty*. Hoboken, N.J.: Wiley-Interscience, p. 1.

making. *Cognitive uncertainty is the uncertainty in knowing what another person has thought or is thinking, or uncertainty about our own thoughts.*[60]

Uncertainty is a **mental state**:

- **Schemas or programmes**. Research has shown that people experience high neural activity in uncertain situations, wherein they use *heuristics* and *automatic thinking*, depending on their mental schemas.

- Uncertainty is the mental processes of **perception and interpretation**. Uncertainty involves a 'statement' or 'event' whose truth is contemplated by a person.[61] Lindley considers uncertainty a personal matter and an expression of the relationship between someone and the world.[62] In a world where no prior meaning comes with things and phenomena, human beings had to invent or assign meanings to each and every single one of them along the journey. Furthermore, in the absence of a source of confirmation, we are habilitated with the faculty of interpretation. The more ambiguous things are, the more room for interpretation there is.

- Uncertainty is the mental faculty and freedom to **anticipating and expecting**, especially bad outcomes and loss. Certainties are here and now; uncertainties are later and farther away.[63] Distance and delays are uncertainties.[64] We create negative or even catastrophic (certainly depending on the person and the situation) scenarios in our minds that lead us to anticipation of the fear of physical annihilation that is the unknown of what comes after. Because if we knew, it would have been different; a totally different story and life on earth.

- Uncertainty is **lack of control** over our lives and **feeling powerless**. It is the perception that we are not actors of our lives. It is the difficulty to make decisions because of the unknown facts or the unpredictable outcome(s) and the negative emotions associated, such as action paralysis, to it. Any decision we make has to do

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[60] Redmond, Mark V. (2015): *Uncertainty Reduction Theory*. Iowa State University Digital Repository (English Technical Reports and White Papers, 3), p. 6.

[61] Lindley, D. V. (2006): *Understanding uncertainty*. Hoboken, N.J.: Wiley-Interscience, p. 12.

[62] Ibid., p. 1.

[63] Smithson, Michael (2008): *The many faces and masks of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 13–24, p. 16.

[64] Ibid.

with uncertainty,[65] be they made at a personal level or as members of different communities.[66]

- Uncertainty is **insecurity** and even **threat**. We feel insecure in the face of outcomes, which might turn out to be negative and harmful.

Uncertainty is the **emotional state of anxiety.**[67]

It is well known that uncertainty constitutes a powerful stressor (Monat, Averil and Lazarus, 1972; Zakowski, 1995).[68] Extreme uncertainties create intolerable anxiety,[69] or, in the words of Ryszard Kapuscinski, people are not made to live in borderline situations.[70] Gudykunst research shows that anxiety[71] and uncertainty usually go together: uncertainty being the cognition whereas anxiety the emotion.[72] In anticipation and expectations, we experience and the fears[73] and negative feelings. Recent research has reinforced the knowledge that uncertainty is even more stressful than knowing something bad is definitely going to

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[65] Bammer, Gabriele; Smithson, Michael (Eds.) (2008): *Uncertainty and risk. Multidisciplinary perspectives.* Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), p. 3.

[66] Ibid., p. 5.

[67] Anxiety should not be confused with fear. Fear is a concrete feeling, a undesired outcome. Fear is at the micro-level, about something (the object) defined and known, while anxiety is a general unpleasant feeling at the macro-level of personal wellbeing.

[68] Cited in '*Uncertainty, stress, and health, in 'Personality and individual differences'* Journal, April 2003, https://www.researchgate.net/publication/223850969_Uncertainty_stress_and_health).

[69] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations.* 2nd ed. Thousand Oaks, Calif.: Sage Publications, 146.

[70] Kapuscinski made a beautiful introduction to its book *Imperium*, where he writes: 'At the approach to every border, tension rises within us; emotions heighten. People are not made to live in borderline situations; they avoid them or try to flee from them as quickly as possible. And yet man encounters them everywhere, sees and feels them everywhere. Let us take the atlas of the world: it is all borders. Borders of oceans and continents. Deserts and forests. And the borders of monarchies and republics? Kingdoms remote in time and lost civilizations? Pacts, treaties, and alliances? Black tribes and red? Human migrations? The borders to which the Mongols reached? The Khazars. The Huns. How many victims, how much blood and suffering are connected with this business of borders. There is no end to the cemeteries of those who have been killed the world over in defence of the borders. Equally boundless are the cemeteries of the audacious who attempted to expand their borders'.

[71] Gudykunst defines anxiety as the feeling of being uneasy, tense, worried, or apprehensive about what might happen, in Nishida, Tsukasa (2015): *Anxiety/Uncertainty Management (AUM) Theory.* In: The International Encyclopaedia of Interpersonal Communication: John Wiley & Sons, Inc., p. 429.

[72] Ibid.

[73] As in the case of risk and uncertainty, it is relevant herewith to clarify the distinction between anxiety and fear. Fear is similar to risk. The object of fear is the known or quantifiable risk. Risk allows for hedonic adaptation and research shows that people feel better about knowing what's coming – even if it is painful – than not knowing. Cited in 'Why uncertainty is more stressful than certainty of bad things to come' by Alice G. Watson. https://www.forbes.com/sites/alicegwalton/2016/03/29/uncertainty-about-the-future-is-more-stressful-than-knowing-that-the-future-is-going-to-suck/

happen.[74] In anticipation, we amplify things and transfer the pain or suffering of the moment enduring in time. The more we have ambiguities, the more we use schemas or automatic thinking. In the case when we feel not having control over our lives and making decisions, it is the unpleasant state of being dependent and in limbo and not knowing how the alternative we are not choosing could have turned out, though it might seem not very promising for the moment.

Brashers and his colleagues propose that people appraise uncertainty for its potential harm or benefit, which is associated with emotional responses such as hope, optimism, thrill, torment, insecurity, anxiety, which motivate behavioral and psychological actions to manage uncertainty.[75]

Uncertainty is the **unpredictable behaviour**: our behaviour or others' behaviours. Our thoughts and emotions are expressed in behaviour and we need to make decisions. Behavioural uncertainty is the uncertainty associated with being able to predict or explain a person's behaviour, or in knowing what behaviours are expected of us or predicting our own behaviour.[76]

What's most crucial, uncertainty is the **lack of meaning**. People have a natural tendency to look for understanding of phenomena and the world. Even Eve and Adam choose to eat from the tree of knowledge of good and evil instead of living in a secure but known world of peace, in a world of pleasure and no pain, searching for meaning and truth.

So we live in a world, which has no definite answers and changes constantly within the limits of the known – unknown. Nowadays, uncertainty, both the objective and the subjective fact, is not the complete unknown. The subjective fact is not the complete unknown, the unimaginable or the never experienced. It is an alternative between the accepted and conventionally known facts. The sources of social uncertainties are known and the limits of

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[74] In an experiment conceived to better understand the relationship between uncertainty and stress, when predictability of the outcome was 50%, stress peaked, maintaining that over millions of year of evolution, this structure of the brain performs a mathematical prediction of the odds of the consequences. It is also informal talking that 90% of our problems is product of our brain or schematic or automatic thinking. https://www.theguardian.com/commentisfree/2016/apr/04/uncertainty-stressful-research-neuroscience

[75] Redmond, Mark V. (2015): *Uncertainty Reduction Theory*. Iowa State University Digital Repository (English Technical Reports and White Papers, 3), p. 30.

[76] Ibid., p. 6.

human catastrophes as well. The experience of the absurdity of life and lack of meaning at some point in time is known to most of us, especially in the adulthood and beyond. The only uncovered is what happens after life, even if it somewhere there, which exists, but we cannot see for different reasons.

I would also say that uncertainty is not only about the future: it is also about the past and the present. We may even get to know the facts of the past and how things went in a specific situation, but the interpretation will always be subjective to how we perceive things now and our actual emotional state. As Lindsey says in the introduction to its book 'Understanding Uncertainty',[77] 'much of the past is hidden from you and there is a lot of the present about which you do not have full information'.

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[77] Lindley, D. V. (2006): *Understanding uncertainty*. Hoboken, N.J.: Wiley-Interscience, p. 7.

I. 4 The Importance of Reducing and/or Avoiding Uncertainty

'In the beginning was not the word, not the deed. Not the silly serpent.

In the beginning was why? Why did she pluck the apple?'

(John le Carré, The Russia House)

'Give sorrow words; the grief that does not speak

knits up the o-er wrought heart and bids it break.'

(William Shakespeare, Macbeth)

Why avoiding or, more realistically, reducing uncertainty or ensuring certainty is so important, also for me as to commit so fervently to it?

First and foremost, for the state of uncertainty and chaos we live in, in times of high-speed globalization and in our continent, to European integration: technology developments and people moving across borders. Uncertainty is the word best describing the era we're living in. It seems like the particles are under pressure and in high temperature, in uncontrolled motion and ready to make the quantum leap. Yet, it has always been like this. It is the perennial, the new and the old, as already explained.

Our race continues to exist for centuries and we reproduce (not that this is only a human specific and exclusive behavior). Why do we need or are we pushed to push forward this idea or project of humanity?

We need to reduce or avoid uncertainty because it poses a threat to our two main existential needs: the <u>need to preserve the self</u> and the <u>need to ensure the continuity of our species.</u>[78][79]

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[78] It is important to stress though, that uncertainty, like all existing facts or phenomena, has its reasons of existing or its functions or as I should call them, its positive aspects. It is proved that in limited levels, uncertainty is good for the creation, but that also life does not fall into boredom. In economics, the discipline

We have to ensure the preservation and continuation of the human race, of our specie. Darwin said it in his theory on species' evolution and Freud captured the idea in his discourse and emphasis on sexuality and the threats to our existence and continuity through aggression, when instincts are suppressed and we answer to this perceived threats through sexual behavior following the sexual instincts, that nowadays may even conclude to perversion or deviant and unacceptable behavior. Maslow sees the sexual behavior also as an expression to other needs or an outlet, door, or a releasing valve, to other needs. Both sets of needs, i.e. physical as well as psychological needs are indispensable for our continuation.

Different dictionaries depict value(s) as "something's worth, the quality of (someone or something) being 'useful and important' and 'the belief about what is right and wrong and what is important in life";[80] 'the importance, worth or usefulness of something'[81] or "relative worth, utility, or importance and something (as a principle or quality) intrinsically valuable or desirable".[82] Kluckhohn (1951/1967) defines value anthropologically as '*a conception, explicit or implicit, distinctive of an individual or characteristics of a group, of the desirable which influences the selection from available modes, means, and end of actions*',[83] whereas Rokeach (1972) maintains that '*to say that a person has a value is to say that he has an enduring belief that a specific mode of conduct or end-state of existence is personally and socially preferable to alternative modes of conduct or end-states of existence'.*[84] The value theory employs different approaches to understand how, why and to what degree persons value things.

As we can see in all definitions, value is: a quality or qualities (the property of something or someone), the degree of importance we assign to these sum of qualities, and the tendency to choose something or someone or a course of action, or as Hofstede puts it, 'values are

that until worked on the assumption of almost full certainty, recently is keen to work with positive uncertainty as the next assumption and in making decisions. But since the world we live generates constant uncertainty, and we are aware of our limited time on earth, this constant flow of uncertainties exceeds the limits of 'good' uncertainty. When uncertainty comes at levels that are hardly tolerable and bring about anxiety, which has considerable consequences on the physical and psychological of the individual and the society, it is a challenge or problem to be addressed.

[79] Social preservation is 'decided' by the ability to pro-create, i.e. through the offspring. Our organism has evolved and is endowed with the mechanisms to enable this process.

[80] Oxford Advanced Learners Dictionary, p. 1708.

[81] https://en.oxforddictionaries.com/definition/value

[82] https://www.merriam-webster.com/dictionary/value

[83] Cited in Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 5.

[84] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 5.

feelings with arrows to them'.[85] The importance of different properties is ascribed partly unconsciously and partly consciously through the process of enculturation and the tendency is unconscious and is non-rational[86] and we learn values during the course of our socialization process. Therefore values are irrational but still a system of reference or a guiding compass to us. This irrational guide highly influences my thinking and motivates my behavior.[87]

Value is both the desired and the desirable, which is not the same thing. The desired refers to what we actually desire (here and now, in the short-term), whereas the desirable refers to the future and the social desirability. The desired is the pragmatic, the desirable the ideology.[88] They may have some characteristics in common and mutually influencing, as the desirable may require renouncing to some of the desired values.

Rokeach categorizes values in terminal values (end states) and instrumental values (ways to get there).[89] The terminal or ultimate values are what we know as intrinsic values whereas we can consider the instrumental values as interim values. These values, especially the instrumental values, are mutually related and form value systems or hierarchies, but these systems need not be in harmony.[90] Instrumental values generate or are achieved to achieve the intrinsic value. Intrinsic values are the values that we ascribe or attribute the most importance to. They are the essential values, the value that an object has in it. The intrinsic values are also known as inherent values, values that are part of us as a permanent, essential or characteristic attribute; values which are born with us. They are not socially construed, though we have a name to them, and relatively unchangeable, independent of the social development phase and in the evolution process, nature or social evolution. The means have evolved, as have evolved the instrumental values.

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[85] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 6.
[86] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviors, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 6.
[87] Still, as Hofstede maintains, values should not be equated to behavior, though they define most of our expressed or subtle actions.
[88] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 6.
[89] Ibid., p. 7.
[90] Ibid., p. 6.

Values have intensity and direction.[91] Values are the needs that we have and the level of need to be fulfilled defines the intensity of the value, while the direction is the motivation that pushes us towards the fulfillment of the needs, in one direction or the other.

Human needs are of paramount importance and value to us. Human needs are the human values. What is most important to me at a certain point in time (of value) is what I mostly need at that particular time.[92]

The preservation of self and the continuation of the species are the 2 main intrinsic values of human being. Challenges to these two irrational values are challenges to humanity existence itself. Uncertainty is a challenge to these two intrinsic values. It attacks the certainty that our needs will be meet and our wellbeing is on jeopardy.

Second: because uncertainty interferes with the principle of harmony by the state of mental misbalance, which manifests itself in emotional discomfort, anxiety and stress. Uncertainty puts life on hold.

As already seen, uncertainty is the internal state of anxiety and stress, which imposes impairment or mental issues. It interferes with our activity of making decisions and taking action, by impeding development and integration at the macro scale.

Practically, any new information that enters our cognitions creates misbalance. It triggers the homeostasis process.

Homeostasis is the process by which the body reacts to changes in order to keep conditions inside the body the same.[93] A relatively stable state of equilibrium or a tendency toward such a state between the different but interdependent elements or groups of elements of an organism, population, or group.[94]

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[91] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 6.
[92] Needs are a state of absence and imbalance in which we urge and are motivated to behave in ways to bring the state of balance.
[93] Oxford Advanced Learner's Dictionary, p. 745.
[94] https://www.merriam-webster.com/dictionary/homeostasis

In biology, **homeostasis** is the state of steady internal physical and chemical conditions maintained by living systems.[95] This dynamic state of equilibrium is the condition of optimal functioning for the organism and includes many variables, which are controlled by one or more regulators or homeostatic mechanisms, which maintain a 'maintenance range'.

As seen, it is a dynamic state, which implies that it is continuous, and steady, at the same time. It implies change and stability. Certain quantity of certain elements. It comes from Greek and means 'staying still or staying the same'. Human body is a perfect system of equilibrium.

This is the condition of the world and the universe. The equilibrium: the balance of forces. It has always startled me how the world and the universe seem stable and like not moving, while at the same time being in non-stop movement and evolution. Altogether with the fact that, as we grow, we need to accommodate outside inputs that contribute to growth while maintaining equilibrium and balance. The illusion or the dualism of order in chaos.

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[95] Gordon, Betts J. *Anatomy and physiology*. DeSaix, Peter., Johnson, Eddie., Johnso, Jodie E., Korol, Oksana., Kruse, Dean H., Poe, Brandon. Houston, Texas, p. 9.

Homeostasis is the state of and road to wellbeing or eudamonia

Harmony is the state of nature. Harmony is a term, which was initially used in the genre of music. It is the simultaneously occurring of frequencies, pitches (tones, notes), or chords.[96] It can be horizontal or vertical or coordinate and subordinate. It is the opposite of cacophony. It creates pleasure for the senses and unifying notes coming from different instruments. It connotes something good, beautiful and pleasant. It is order and structure.

Harmony is the state and regulating principle of nature. By harmony I mean equilibrium, balance, ratio. It does not imply equality in weight or proportions.

Acclimatization, on the other side, is the process in which an individual organism adapts to changes in its environment, allowing it to maintain performance across a range of environmental conditions.

In psychology, it is referred to as the adaptations process, mainly through hedonic adaptation. There are certainly limits to it; otherwise there would be a permanent disruption, which leads to maladaptation or chronicle mental and physical illness.

Uncertainty creates or triggers cognitive dissonance

'Cognitive dissonance is a drive or feeling of discomfort, originally defined as being caused by holding two or more inconsistent cognitions and subsequently defined as being caused by performing an action that is discrepant from one's customary, typically positive self-conception'.[97]

Dissonance is the opposite state of resonance or harmony. Other synonyms[98] include inconsistency, discord, cacophony, and conflict.

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[96] Malm, William P. *Music Cultures of the Pacific, the Near East, and Asia,* p. 15.
[97] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 168.
[98] https://www.thesaurus.com/browse/dissonance

We might as well speak of the psychological hemostasis, a brain/mind process aiming at maintaining mental equilibrium. An inside – outside relationship disrupted though external inputs which have to be accommodated.

And it might as well have biological and neurological basis, as it is difficult to draw a line between them; I don't see the chemical reactions producing nothing metaphysical and the metaphysical not having an impact on the physical.

As Piaget would maintain in his cognitive development theory, we have an innate desire to maintain a state of cognitive equilibrium,[99] or cognitive balance.[100] Bacroft, a British physiologist, was the first to say that higher brain function required the most stable internal environment. Thus, to Barcroft homeostasis was not only organized by the brain—homeostasis served the brain.

Uncertainty disrupts the anticipation of equilibrium. It is characterized by **impact bias**, which is our inability to anticipate our emotional reaction to an event, which tends toward *overestimating,* because we cannot think of how we will address dissonance. We cannot anticipate resonance reduction, because we cannot anticipate hedonic adaptation. This is the reason why we feel distress when thinking about major future events, mainly negative, and of the often-heard comforting saying 'one day at a time'.

Uncertainty is the main cause for anxiety and distress. In the long-term cross-cultural research led by Hofstede and his team, the main reason why people and cultures avoid uncertainty was the level of stress.[101]

Certainty is an intermediate value, which leads to the terminal value of wellbeing!

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[99] According to Piaget, cognitive balance is a state of balance between individuals' mental schemata, or frameworks, and their environment. Such balance occurs when their expectations, based on prior knowledge, fit with new knowledge. He used the concept of equilibrium to describe one of four critical factors in cognitive development. Piaget conceived equilibration as an ongoing process that refines and transforms mental structures, constituting the basis of cognitive development.
In https://www.britannica.com/science/cognitive-equilibrium

[100] Ormrod, J. E. (2008). *Educational psychology: developing learners* (6th ed.). Upper Saddle River: Merrill., in https://link.springer.com/referenceworkentry/10.1007%2F978-0-387-79061-9_602

[101] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 29.

Wellbeing is an intrinsic value per se. It is the very immediate value and pre-requisite to the fulfillment of our basic existential needs. This is relatively stable in time, since, as we will see, we cannot trace since when people long for wellbeing, whereas is universal and part of what Hofstede calls mental programs at the universal level.[102]

Wellbeing is a physiological as well as psychological state; a state of homeostasis or balance, physiological or psychological, though either has an impact on the other. People's thinking and action is directed toward and motivated by the achievement of this state, be it physiological or psychological.

Wellbeing is an intrinsic as well as an extrinsic value. We need to be well with or without the others, depending or not from the others, social or lone being. It is independent of values ascribed by religious of philosophical teachings. Yet, wellbeing is understood and achieved in relation or cooperation with the others.

Well-being is often equated with the experience of pleasure and the absence of [pain] over time[103] or the feeling of happiness. In this thesis, wellbeing is not equated to these two states; it is not only the hedonic state.[104]

Hedonism is a school of thought, which argues that pleasure, is the primary and most important intrinsic value or good. According to this school of thought, a hedonist strives to maximize net pleasure and avoid pain. Epicurus would speak of a state of highest pleasure as sustainable pleasure, the absence of suffering and freedom from pain in the body and turmoil in the soul, and freedom from fear. Bentham and Mill would speak of pleasure and the high and low pleasures in their works on utilitarianism. Freud, in its initial works, will speak of the principles of pleasure principle, which motivates the organism to recreate in the future the

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[102] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 3.
[103] In Tamir, Maya; Brett Ford (2012). "Should People Pursue Feelings That Feel Good or Feelings That do Good? Emotional Preferences and Well-Being". *American Psychological Association* 12 (5): 1061–1070. doi:10.1037/a0027223
[104] It is not this thesis intention to diminish the importance of pleasure and happiness, but these are either states of pure physical pleasure and can be derived also from harmful behavior toward others, or short in time. In the thesis pleasure is more about the pleasures of mind, rather than mere physical pleasures, though they are experienced also physically.

situation, which it has just found pleasurable, and to avoid situations that have caused pain in the past.[105]

In this thesis, wellbeing is the state of *eudaimonia*, from the Greek word for wellbeing or human flourishing: an affective state (without undervaluing the mental state, which has a huge influence in the affective state). Wellbeing, understood as *eudaimonia*, is the state of feeling good or experiencing positive emotions, which come first from a state of mindfulness thinking and awareness. Since antiquity, philosophers used to speak about wellbeing, eudemonia and *ataraxia*, as both a state of mind and a way of life.[106]

It has been questioned whether it is a pure or mere hedonic state, but since Greeks philosophers tie this concept to the concepts of virtue (arête) and reason: we cohabit with pain and suffering which are normal and human emotions and feelings; an unavoidable part of our life.

For Plato it is the harmony of the soul. It is him who introduced the idea of king-philosopher, which I will elaborate when dealing with the image law should assume in order to be effective in the 21st century. Aristotle, whose work mainly concentrated on ethics, strongly made reason as the center of it. He thought that the attainment of reason is the true achievement of eudemonia. Epicurus would speak of ataraxia, the peace of mind. But, as eudemonia implies action, being active, ataraxia requires more for avoidance, for minimalism and maximizing pleasure by minimizing pain and that happiness resides in our minds.
<u>Wellbeing is a tri-dimensional phenomenon</u>: it has a past, a present, and a future.

The past of our wellbeing is how we see our life in retrospective; it is the narrative of our past life. One of the main outcomes psychological therapies should aim at is the building of a narrative of the person in therapy. This narrative is influenced by many factors, and it is not easy to construct a positive narrative. The present of wellbeing is the actual state of need satisfaction. The narrative of our life or how we do perceive it largely influenced by it. Meeting human needs in the present will ensure wellbeing. The future of our wellbeing is marked by our expectations and the anticipation of the meeting of our needs and wellbeing.

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[105] Freud, Sigmund. (1950) *Beyond the principle of pleasure*. Though this is true to a certain degree. Later he would acknowledge the principle of reality, known as the deferred gratification.
[106] I personally do not see any logic in experiencing eudemonia as a state of mind without exerting it on the outside. I will elaborate more on this when speaking of the cognitions and their importance in law.

We need to have certainty that our basic needs, which lead to our wellbeing, will be met and protected. We need to have certainty in order to make decisions and plan our future ahead; otherwise ewe would be living in an unpleasant state of psychological limbo and dependence.

In his theory of motivation Maslow recognized 5 categories or classes of needs, grouped in a 5-level hierarchy, which trigger human behavior in a pre-potency row: it is not possible, at least in theory, to pass from one of the levels to the others, without fulfilling the needs in a lower level. These levels are: level 1: the physiological needs (eat, sleep, breathe); level 2: safety needs or the need to be safe from harm (is the level where the needs for safety and security are rooted); level 3: love and belonging needs; level 4: the need for esteem; and level 5: the need for self-actualization. The fulfillment or satisfaction of these needs leads to a life of wellbeing.

Let's turn to the 'negative' aspects of uncertainty and why are we programmed mentally, as individuals and society, to reduce or avoid it. Uncertainty, in uncontrolled levels, leads to stress and anxiety and health consequences. This impedes the achievement of wellbeing, be it individual or societal. As seen in subchapter I.2, uncertainty mainly is an internal state of negative thoughts and feelings and this thesis is focused on these aspects.

Wellbeing is important for our health, physical and mental health, in the known/unknown chaos – order – chaos world. Uncertainty is a threat to the achievement of the eudiamonic state. In the study led by Hofstede, important correlations were found with national anxiety level[107] and extreme uncertainty create intolerable anxiety[108] and negative correlations with various measures of subjective wellbeing[109]. The fathers of behavioral economics, Kahneman and Tversky, will take the principle of hedonic adaptation from psychology, which is very important for the wellbeing, as their main tenet. I would prefer to use the term 'eudaimonism adaptation' as the most important. With the aging and the many experiences in life, people understand that the most important thing is feeling good, which is more a state or pleasure of affections and mind, rather than pure physical gratification. This is what the thesis considers as wellbeing.

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[107] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviors, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 145.
[108] Ibid., p. 146.
[109] Ibid., p. 145.

I firmly believe in the positive feelings and feeling good, but feeling good does not mean at all costs feeling pleasure or emotionally satisfied, and this is what happens mostly nowadays. Negative feelings send signals that our existence is being threatened. Suffering sends signals of threatening to our existence and we all want to avoid it. Our instinct to preserve ourselves requires us to send signals that we feel good. This feeling good has more to do with the mental state and this is what the positive and meaning psychology refers to mostly. This feeling good is mainly related to conscious processes of events internal processing. From my observation of the people encounters in the social media as well as writings in online journals, religion, spirituality and eastern religious philosophies are gaining and regaining momentum because of their understanding of a good life.

Wellbeing is the meaning of life. More and more we hear about the term 'meaning of life'. As emphasized in the first sub-chapter, not having a book of truths or instructions has always been driving us towards searching for meaning of our life and meaning in our life. The need to know the world and find meaning for our existence has also been with us for a long time.

Cognitive adaptation is very important for the way we perceive things and stories, that is why the pleasures of mind are very important for how we interpret the world and our life events. When we know that we are doing something positive that will influence the life of others or other events, we perceive these things as positive in our minds, and it has a positive repercussion in our affective state of being.

And third: because we have always 'longed' for certainty. We want to understand the whys because we need to make predictions and adapt to situation and take precautionary measures. People have a built-in programme or are pre-programmed to avoid uncertainty because:

So, this social world has to be ordered and structured and has to have a relatively clear and stable image.

I. 5   Strategies to Avoid or Reduce Uncertainties

As introduced above, the sources of uncertainties can be different in the process of communication and interaction with other people, within or outside our community. The level of tolerance towards these uncertainties depends on the characteristics of a person and the situation as well as the historical developments of a country or society. As argued in the previous section, there is a universal need to avoid or reduce uncertainty because it poses a threat to individual and society's wellbeing. Though the removal of uncertainty is not an easy job, [110] each individual and every society have produced and established ways and mechanisms to cope with it, the focus of this part. These ways and mechanisms do not differ very much from each other, if not in remoteness of structures in charge and the point in time, remarking their commonalities in space and time. Evidencing these main pillars is also an objective of this section.

I. 5. 1 Addressing or Copying with Uncertainty at the Self Level

No human being is immune to uncertainties and its physical, mental and emotional implications. We tend to reduce or avoid it through conscious and unconscious mechanism. Human beings address uncertainty through internal structures to predict the (social) world and external structures to make the social world more predictable. These structures, be they internal or external, have the same guiding and organizing principles.

Social cognitions: automatic thinking and controlled thinking. Making sense of the social world and the others

Avoiding uncertainty seems to be hardwired in the brain; different parts of the brain are activated when people are in a state of mental conflict or have made a choice.[111] It is only the process and intensity of dissonance reduction, which does vary across cultures, reflecting the differences in cultural norms.[112]

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[110] Lindley, D. V. (2006): *Understanding uncertainty*. Hoboken, N.J.: Wiley-Interscience, p. 8.
[111] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 190.
[112] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 191.

It is certainly difficult to predict the behavior of highly sophisticated organisms in a variety of complex situations.[113] And, if this is difficult for the science, what about ordinary people?

It would be relevant to make a point about science, which will be retaken in section I. 5. Science is a gigantic step in the quest for truth and certainty in the world. Yet, it is a main source of uncertainty as well. Theories within the discipline of social psychology and sociology, where my work mainly draws from, such as behaviorism, cognitive psychology, phenomenology, etc., display a tendency to demonstrate the difference or maintain that one theory holds or has found the truth.

Behaviorism is quite an important development in psychology because it studies the reinforcing properties in an environment.[114] But these are not the sole factors and this is but too simple a formulation to explain human thinking and motivation[115]. The socialization process and the learning of what is 'normal' within a society are important, yet not the only drives behind persons' or a groups' behavior. And it can be highly misleading.

Cognitive psychology has the merits of finding out about construals – the ways in which people perceive, comprehend, and interpret the social world.[116] The image in the brain and the feelings accompanied it. As Kurt Lewin, considered the father of modern experimental social psychology, which applied the ideas of Gestalt psychology, from how we perceive the physical world to the social world maintains – 'it is more important to understand how people perceive comprehend, and interpret the social world than it is to understand its objective properties'.[117] Gestalt therapy, from gestalt – the whole - holds that 'we should study the subjective way in which an object appears in people's minds, rather than the way in which the objective, physical attributes of the mind combine'.[118]

The harmony, the aggregate, the resultant they create in our mind – because it is impossible to understand the way an object is perceived only by studying the building blocks of

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[113] Ibid., p. 6.
[114] Ibid., p. 11.
[115] Ibid., p. 15.
[116] Ibid., p. 12.
[117] Ibid., p. 12.
[118] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 12.

perception. The 'whole is different from the sum of its parts', just like the forest is more than its individual components.

On the other side, there is the study of phenomenology, both in sociology as in philosophy. It is concerned with the way object and phenomena are 'felt'. Sociology has a whole range of other approaches and theories, such as structural functionalism and symbolic internationalism, which maintain just the same as the abovementioned psychological theories.

If we are to look at them from close, as I have done, given that I am trained in both disciplines, we understand that they concentrate on specific parts, and none of them cannot be said to be wrong and dismissed. I strongly believe that this is not the right approach. The right approach for the disciplines, is to not necessarily insist on who is right and wrong or pointing out 'forcedly" to the differences. As already pointed out at the section on methodology, and will elaborate on the section about law, this approach tends solely to create more uncertainty. And it has. As Giddens rightly points out in *Sociology*, there are too many micro and mega level theories, all of them creating more confusion.

Going back to the individual and the lay person level, it is quite difficult for the lay person to understand at a precise moment what lays behind a person or its behavior, its prevailing motives, that is why we have growing our endeavor to construct an outer world which is as much ordered, structured, so that this common environment does not pose the threat of too much uncertainty which would impair our functioning and co-habitation.

'The human brain has evolved to be a powerful, finely tuned instrument for understanding other people.'[119] We are fascinated with explaining other people's behavior[120], because 'thinking about other people and their behavior help use understand and predict our social world (Heider, 1958; Kelley 1967, in Aronson 92) and 'are extremely good at social cognitions'[121] which refers to social cognitions – 'how people think about themselves and the social world or how people select, interpret, remember and use information to make judgments and decisions'.[122]

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[119] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 58.
[120] Ibid., p. 92.
[121] Ibid., p. 58.
[122] Ibid., p. 17.

There are two kinds of social cognitions identified by social psychologist: **automatic thinking** and **controlled thinking**.

Automatic thinking, by definition, is low effort, quick, unconscious thinking. It is non-conscious, unintentional, involuntary, effortless, which implies not taking much time and energy. It helps us understand new situations by relating them to our prior experiences … by ensuring continuity, 'so that we do not start from scratch in every new situation or when meeting new persons.[123]

To do so we use <u>schemas</u>, <u>priming metaphors</u> and <u>judgmental heuristics,</u> which make our decisions easier.[124]

Schemas or personal theories are mental structures that organize our knowledge about the social world and help us understand and interpret the world,[125] without having to spend weeks to with people to figure out what they are like.[126] They appear to be used by all humans.[127] They are very useful for helping us organize and make sense of the world and to fill in the gaps of our knowledge.[128] Schemas are constantly active and ready to use when interpreting ambiguous situations.[129]

Schemas are structures, order, and certainty. As such, they are internally harmonized. The more ambiguous our information is, the more we use our schemas to fill in the blanks. As long as people have reasons to believe their schemas are accurate, it is perfectly reasonable to use them to resolve ambiguity.[130]

The social world is full of ambiguous information that is open to interpretation[131] and one way to deal with the 'blooming buzzing confusion', as William James would say, is to rely

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[123] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 59.
[124] Ibid., p. 67.
[125] Ibid., p. 59.
[126] Ibid., p. 98.
[127] Ibid., p. 73.
[128] Ibid., p. 59.
[129] Ibid., p. 61.
[130] Ibid., p. 59.
[131] Ibid., p. 60.

on schemas, which help us reduce the amount of information we need to take in and help use interpret ambiguous information.[132]

The schemas which are accessible and primed[133] are the ones more likely to be used when making judgments. (Higgins, 1996a; Sanna and Schwarz, 2004; Wheeler and DeMarree, 2009; Wyer and Srull, 1989, in Aronson et al., p. 61), especially those are chronically accessible due to past experiences.

The content of our schemas is influenced by the culture in which we live.[134] They are a very important way by which culture exert their influence, namely by instilling mental structures that influence the way we understand and interpret the world (Wang and Ross, 2007, in Aronson et al., p. 73).

Implicit personal theory – which personality traits go together.[135] We often use two such theories or schemas: one is about 'warmth' and the other about 'competence'.

Holistic vs. analytical thinking. Human mind, according to Norenzayan and Heine (2005) is like a toolbox filled with specific tools. All humans have the same tools. I would say that we have the same mental structure but and as Aronson et al. maintain, we are oriented and reinforced to see some images or focus on particular aspects or 'what we notice and remember about the world'. Individualist culture have embraced more of the analytical thinking, in which people focus on the properties of the objects more than on the surrounding, whereas in the holistic thinking style, mainly adopted by collective cultures, such as East Asians cultures, people focus on the overall context, particularly the ways in which objects relate to each other.[136] It is a matter of degree.[137]

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[132] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 65.
[133] Priming refers to the process by which recent experiences increase their accessibility. People can be primed by the way they are asked about something or being exposed to something.
[134] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 73.
[135] Ibid., p. 98.
[136] Ibid., p. 74.
[137] Ibid., p. 112.

According to one study, people in all cultures are capable of thinking holistically or analytically, but the environment in which they live or even the environment in which we have been primed recently, triggers reliance in one of the styles.[138]

Priming metaphors are metaphors about the body and the mind, which influence people judgments. How we perceive some situations, e.g. as clean or not, according to our personal mood, influences a lot our judgment.

Judgmental heuristics (are mental shortcuts that are used to make judgments quickly and efficiently when we do not have a ready-made schema to apply to a specific case or there are too many schemas that could apply, and it is not clear which one to use.[139] They are efficient, and most of the time lead to good decisions in a reasonable amount of time, are highly functional and serve us well. (Gigerenzer, 2008; Griffin and Kahneman, 2003; Gilovich and Griffin, 2002; Kahneman, 2011; Nisbett and Ross, 1980 in Aronson et al., p. 67). They also depend on their availability[140] and do not always lead to the best decision,[141] we use them both for making judgments for ourselves and the others.[142] We also use **representativeness heuristics** – mental shortcuts we use to classify some things according to how similar it is to a typical case.[143] This helps us save time and efforts.

People, by nature, when making judgments about others, focus more on the individual characteristics of what they observe and, furthermore, we do not use base rate information sufficiently but pay most attention to how representative the information about the specific person is.[144] This is also another argument supporting the universalism of our mental traits: we are just reinforced and primed to see things differently or focus at different traits. Just the fact that different zones in the brain light up during the application of the imagery methods in neuroscience experiments does not indicate that we have different mental constructions.

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[138] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 74.
[139] Ibid., p. 67.
[140] Ibid., p. 68.
[141] Ibid., p. 67.
[142] Ibid., p. 69.
[143] Ibid., p. 69.
[144] Ibid., p. 70.

First Impressions

First impressions are based on a central quality or attribute of the other person, which we come to acknowledge for different reasons. It is mainly dependent on what we look at a person. This is strongly connected to the fundamental attribution error - the cause of our bad behavior is strongly influenced by the situation, whereas that of the other people by their disposition and the other way around – our good behavior is the result of our positive dispositions whereas of the others, due to the situation, because this serve to our positive self-image, and the research has shown that although we may use the two-step process of making attributions by making both attributions[145] and even when the influence of the situation on someone behavior is obvious, people persist in making internal attributions. They are defending us and self-serving.[146]

Controlled thinking is one of the hallmarks of what it is to be human',[147] which means that this is the very characteristic, which differentiates us from other living beings. It is defined as thinking that is conscious, intentional, voluntary and effortful.[148]

Controlled thinking is very much linked to our belief that we have free will. And as psychologists maintain, it is in society's best interest to believe it has control over its action.[149] When it comes to law, people have to think that law it is not only being imposed, but also chosen by their free will.

Yet, controlled thinking poses two challenges to certainty: counterfactual thinking i.e. changing some aspects of the past as a way of imagining what might have been[150] (the easier it is to undo an outcome, the stronger the emotional outcome) and the overconfidence barrier.[151]

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[145] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 107.
[146] Ibid., pp. 113-114.
[147] Ibid., p. 75.
[148] Ibid.
[149] Ibid., p. 77.
[150] Ibid.
[151] ibid., p. 79.

Dissonance reduction mechanisms, which are closely related to internal attribution vs. external attributions. We also attribute qualities on the basis of our mood of the moment, which is a strong priming factor.

'Social psychologists seek to understand the fundamental laws of human nature, common to all, that explain why we construe the social world the way we do'.[152] The goal of the science of social psychology is to discover universal laws of human behavior, which is why cross-cultural research is often essential'[153] and 'as more and more cross-cultural research is conducted carefully, we will be able to determine which social psychological processes are universal and which are culture-bond'.[154]

Hofstede would evidence the social or collective tendency and mechanism to avoid uncertainties. Yet, he emphasizes that the main studies nourishing his findings are based on individual levels, which certainly add up to the collective tendencies. After a long period of study into world cultures he detected common cultural dimensions in many societies (initially 4 and now 6 cultural dimensions).[155] One of these dimensions is named the 'uncertainty avoidance' dimension, defined as '*the extent to which the members of a culture feel threatened by the uncertainties of the future, and are programmed to feel either uncomfortable or comfortable in structured or unstructured situations, creating beliefs and institutions to deal with them*'.[156] It implies the level or degree of tolerance that a society as a whole has towards unknown and unstructured situations.

Different approaches emphasise different aspects of the human psyche or the environment having a decisive role in how individuals deal with uncertainty. Freud would speak of internal psychological defense mechanisms, which protect the individual from the environment and ensure its existence. Personality is a combination and product of the interaction between personal traits and the tendency to interact with the social environment. One of the main psychological tests, the Myers-Briggs personality test, which indicates our

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[152] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 14.
[153] Ibid., p. 19.
[154] Ibid., p. 42.
[155] These dimensions are: power distance, uncertainty avoidance, individualism vs. collectivism, masculinity vs. femininity, long-term vs. short-term orientation, and indulgence vs. restraint.
[156] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications. The term was originally used by Cyert and March in their book 'A behavioural theory of the firm' (1963).

tendencies towards choices and making decisions, shows that different personalities (combination of four pairs of preferences or tendencies[157] among 4 principal psychological functions) display different levels of tolerance to uncertainties.

Those on the introversion/thinking/judging combination are more intolerant to uncertainty, due to their need to overthink and prepare in advance. The 'Big 5' personality traits theory, another debatable but recognized psychological theory on personality, speaks of five broad dimensions.[158] Neuroticism is often cited when speaking about intolerance to uncertainty, just like the authoritarian personality type. Yet, it is induced that the more someone is on the consistent/cautious, efficient/organized, solitary/reserved, challenging/detached, and sensitive/nervous side of the dimensions, the less tolerant individuals are to uncertainty.[159] Rokeach set up a bipolar continuum with 'gestalt type' at one end and 'psychoanalytic type' at the other.[160] The gestalt type possesses a need to know and understand whereas the psychoanalytic type by a need to defend against the threatening aspects of reality.[161] The gestalt type is the *knowledge seeker individual[162]* in the society. A second tradition emphasises the debilitating power of uncertainty for the affective, cognitive, and physiological capabilities of the affected organism and that people need to maximise certainty[163]; this is more of a psychoanalytic type. Another tradition points at the processes of achieving hedonic adaptation and maximizing subjective expected utility in decision-making.[164] Heuristics and other shortcuts,[165] which help us make sense of the chaotic and changing world around us, are emphasised at some approaches. Some speak of the bounded rationality[166] and the irrationality of human beings when making decisions. Some point to the

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[157] Introversion/extraversion; sensing/intuition; thinking/feeling; and judging/perceiving.
[158] These 5 dimensions are:
  - openness to experience (inventive/curious vs. consistent/cautious);
  - contentiousness (efficient/organized vs. easy-going/careless);
  - extraversion (outgoing/energetic vs. solitary/reserved);
  - agreeableness (friendly/compassionate vs. challenging/detached); and
  - neuroticism (sensitive/nervous vs. secure/confident).
[159] More on the personality and uncertainty (research) is to be found in Hofstede's study of cultures.
[160] Smithson, Michael (2008): *Psychology's ambivalent view of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 205–217, p. 206.
[161] Ibid.
[162] Ibid.
[163] Ibid.
[164] This is an approach pioneered by Kahneman and Tversky.
[165] Ibid.
[166] Simon (1956 and 1982) in Smithson, Michael (2008): *Psychology's ambivalent view of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 205–217, p. 210.

emotions and the psychosomatic consequences,[167] which guide our decision-making. Other more recent accounts have proposed a dual process or dual system framework for human cognition,[168] rejecting the idea that people are posited at some point of the continuum permanently and maintaining that people can be at different positions in different aspects of life at the same time.[169] System 1 processes are often described as associative, intuitive, heuristic, fast, socially grounded and contextualised, whereas system 2 processes are rule-based, analytical, rational, slow, asocial, and decontextualized, that everyone possesses both modes and can switch between them and the adaptive challenges are thrown at people by the social environment. The latter adds the cultural touch to the personal approaches to uncertainty.

Nowadays, more and more people are turning their heads to the functional and positive aspects of uncertainty. It is more and more accepted as an integral part of life. Complete certainty cannot be achieved and it is not desirable. Monotony, depression, perception of stagnation, interference with the private life, lack of control, lack of meaning in life and constant account with the fact of death, are all costs we have to endure to achieve maximum certainty.

A recent trend in the theories and formation of leadership employs psychological tools to test and establish profiles of leaders in different walks of life. The Change Style Indicator (CSI) is one of these tools that measure the preferred style when faced with change, which implies uncertainty. The test posits individuals in a continuum edged by the 'conserver' and the 'originator', while at the middle reside the 'pragmatists'. The conservers prefer to know the unknown. They prefer change that is gradual and incremental and like to minimise chaos and uncertainty. Still, there are rarely pure pragmatists, originators, or conservers.

These are all considerations of how we make certainty in our life and how we cope with uncertain situations. In my understanding and firm judgement, everyone perceives and lives

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[167] Wilson and Schooler 1991; Damasio 1994; Lowenstein and colleagues, 2001 – cited in Smithson, Michael (2008): *Psychology's ambivalent view of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 205–217, p. 211.

[168] Epstein et al., 1992 and Tetlock 2002 – cited in Smithson, Michael (2008): *Psychology's ambivalent view of uncertainty*. In Gabriele Bammer, Michael Smithson (Eds.): Uncertainty and risk. Multidisciplinary perspectives. Pbk. ed. London, Sterling, VA: Earthscan (Earthscan risk in society series), pp. 205–217, p. 212.

[169] The idea of the scientist that might be strongly oriented towards both discovery and verification is brought.

in uncertainty. The extent to which people accept or fight uncertainty depends on his or her personal tendencies or preferences, life occurrences and the natural and social environment, all together. The extent to which uncertainty is tolerated is a product of the interaction of all the forces abovementioned.

Therefore, uncertainty avoidance or reduction is a universal trait and we are inclined to address it through what we may call uncertainty management strategies: internally or psychologically through knowledge (seeking information and establishing schemas) or acceptance (positive uncertainty) and externally through the creation of a comfort zone and safety net (of rules and roles). The key words of addressing uncertainty are: *knowledge* and *order*.

Conscious mechanisms include the safety nets. Outside social structures have been an outer defense mechanism people have established in time, such as family and friends nets. These are the structures we often include in our calculations when making decisions; they are the known variables in the equation.

I. 5. 2   Addressing or Copying with Uncertainty at the Society or Local Level

In this chapter I will endeavor to draw parallels though internal structures and external structures, by evidencing how the inner world is unconsciously transmitted to the outer world. Just like castles, according to Hugo, which are external expressions of the internal world, or like Gaudi, the God's architect, who saw his art as the continuation of nature's art. And just like we have created a system to protect us from the savage nature, we have also created a system to protect us from each other, or even from ourselves.

This section is highly built upon the previous one and the key words remain *knowledge* and *order*. How do people of different cultures and societies adapt to uncertainty? Is it culturally rooted? I still hold firm to the previous belief: people, individually or in society, do respond to uncertainty in taught manners, which have been highly influenced by the environment a society has been living and the history.

Cultures are the incarnation of the practices[170] societies have adopted and adapted to in order to respond to the uncertainties of a given period, keeping the essence of addressing the common traits of uncertainty in time. It is certainly difficult to say what percentage of which type dominates in a culture, and whether one culture has more of a type or the other, given the lack of empirical data in this regard. It is difficult to hold to the idea of the trees and the woods/forest.

Going back to Hofstede's study, different societies have adapted to uncertainty in different ways, depending on the natural environment and cultural heritages of the societies. The latter is the result of the interaction between the natural environment and the history. Hofstede, in its famous study on cultural dimensions, has classified societies as high avoidance and low avoidance cultures, depending on the level of tolerance they dispose and display toward uncertain and unstructured situations. It is of paramount importance to emphasize my firm believes, as also mentioned in the previous section, that every human group or society experiences uncertainty and cope with it through seeking knowledge and establishing structures which makes predictions possible. Cultures are nothing more than a set of institutions of roles and rules, which have addressed uncertainties in time.

The more a society tries to address uncertainty, the further away the structure and institutions making certainty. Western cultures, famous for their individualistic lifestyle and preferences, have delegated normative and regulating functions to remote institutions. The stronger a culture's tendency to avoid uncertainty, the greater its need for rules.[171] High UA countries shun ambiguous stations and people look for structure in the institutions and relationships, which make events interpretable and predictable, while low UA countries display acceptance for unfamiliar risks and situations and starting activities for which there are no rules.

However, every society copes with uncertainties through the domains of religion, law, and technology,[172] which are transferred and reinforced through basic institutions such as the family, the school and the state.[173]

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[170] There are certainly many definitions of culture; yet what is in common is the idea of practices, which are embedded in the beliefs, values, and norms (the internal form of cultures) of a given society at a point in time.

[171] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 147.

[172] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviors, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 145.

[173] Ibid., p. 146.

Religion tries to give meaning to people's life as connected to a big audience which is a supranatural being, while science tries to understand how things are *per se* in order to create and order of meaning within earth and the universe, without necessarily calling the almighty.

Natural and environmental uncertainties have been addressed by science and technology. Science collects data through observations and experiments assembled to infer general rules that are often deterministic and involve little uncertainty.[174] The advantage of science is its repeatability character, though it still remains full of uncertainties. Technology can be considered as the modern ways to cope with uncertainties, whereas religion is the old tradition of making certainty out of the unknown world.

Social uncertainties are addresses by the family, research, education, and the state. The latter is a structure making charge also with the addressing of natural and technological uncertainties. The thesis concentrates on the law and state role of making it, which will be addressed into details in chapters II and III, whereas family will be touched upon as an example in chapter IV.

3 elements of a culture indicating or highly correlating to the level of tolerance for uncertainties are:

- *Rule orientation* – the level of obedience to the rules. Disagreements with the rules orientation show tolerance for ambiguity, whereas agreement with shows the tendency to avoid uncertainties[175]
- *Employment stability* – how long people tend to stay in a workplace is positively correlated to the level of tolerance for uncertainties. People with low level of tolerance for uncertainty, were the ones to indicate the highest possible number of years in the given organization[176]
- *Stress* – how people cope with stressful situations and what are the ways a society forbids its fellows to demonstrate aggressiveness or other ways as a valve of releasing stress

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[174] Lindley, D. V. (2006): *Understanding uncertainty*. Hoboken, N.J.: Wiley-Interscience, p. 9.
[175] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 149.
[176] Ibid.

Of the 33 European countries appearing in the Hofstede study list, the mean score is 70.3, with Greece and Portugal ranking at the top with 100 and 99 respectively, and Denmark and Sweden ranking at the bottom with 23 and 29 respectively. Albania scores 70 whereas Germany 65, making them both appearing among countries that have a preference for avoiding uncertainty,[177] very close to the medium.

It is said we live in a liquid world. I say it has always been like this. It is just that, due to technology, things move faster, but they were always in motion. This is not necessarily positive. Making reference to rituals, Hofstede claims that there is no evidence of a basic change of human nature in the process of modernization and that with our primitive ancestors we share a need for social cohesion and a limited tolerance for uncertainty.[178] Despite the fact that we have modernized our technology to cope with the uncertainties of the nature, these devolvement themselves have become source of uncertainty. As Eduard Osborn Wilson rightly states 'we have Palaeolithic emotions; medieval institutions; and god-like technology'.[179]

I. 5. 3 What has Characterized Our Quest for and to Certainty?

What are the common traits of the ways and mechanisms to cope with uncertainty at the individual and cultural level, despite the level of tolerance for ambiguous situations? As put in words in the previous sections, the key words are: *knowledge* and *order*.

Neurologists speak of structures of the mind. Plato thought of a heavenly order. Aristotle also spoke of human beings as political animals, having the need to organize. Einstein would seek for cosmic and worldly order. Different scholars from different disciplines would speak of the process of Autopoiesis,[180] the making and breaking of the order. Chaos – order – chaos sequence is the law of the universe and it seems also of the human society, though constant interaction and transformation. There are structure in institutions and relationships, in roles and rules, giving them a certain form with hierarchy and authority and defined duties and obligations and competences. What they have in common are rules and roles: the rules and

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[177] https://geert-hofstede.com/national-culture.html
[178] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations.* 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 148.
[179] https://en.wikiquote.org/wiki/E._O._Wilson
[180] The word poiesis comes from poetry and means the process of making.

roles in the family; the religious rules and roles. Rules and roles of groups we belong to as our safety net. Order includes creating and maintain structures, decide and have a relatively agreed flow of action, acquire authority or legitimacy to norm and regulate behavior, and create expectations and anticipation of positive processes and potential positive outcomes for at least some parties.

The societies, which are highly avoiding uncertainties, try to establish as much as possible structures so that the number of unstructured and thus uncontrollable situations is kept at a minimum. These societies have social structures and rules. The more a society tries to control the unstructured, uncontrolled and unpredictable situations, the more they tend to create structures, so the collective mental programming to be as predictable as possible. It holds true about rules too. Research has shown that high uncertainty avoidance societies, despite in need for rules, do not like them or respect them rigorously.[181] Rules and roles create relatively stable and agreed expectations, which make us, think with order. We have also seen that people look for a knowledgeable and trustable authority, and an authority to certify this knowledge, to seek guidance from and make decisions.

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[181] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications.

I. 6 Sources of Uncertainty in Private Relations at the Global Level

It is certainly difficult to draw a line between the three sources of uncertainty today, and this is very well understood in the panorama(s) of society today 'provided for' by some renowned sociologists.

I. 6. 1 A Picture of Global Society

If we take a general picture of the world today or would have to present it in a miniature model, it would be:

'The world we live in today can feel liberating, exiting, confusing, and even downright contradictory. Global communication and friendships are in many ways easier to make than in the past, yet at the same time we see violent crime, terrorism, wars and enduring social inequality. Technological development is increasingly rapid, opening up new opportunities and possibilities, but worries about the damaging impact of modern life on the natural environment are widespread. Most people within the relatively rich countries seem materially better off than ever before, but in other parts of the world many millions of people live in situations of poverty where children die for lack of food, safe water supplies and basic amenities. How can this be, when we also have opportunities to control the destiny of humankind that would have been unimaginable to our grandparents?' (Anthony Giddens, Sociology, 2013).

Giddens, like other sociologists such as, Ulrich Beck and, Zygmunt Bauman, have endeavoured to draw abstract configurations and explain post-modern societies and the risks or uncertainties they face. They use different terms to define the world we are living in today. Giddens speaks of a '*runaway world'*, marked by new risks and uncertainties.[182] Living in an information age, society has become more reflexive, i.e. have to constantly think about or reflect upon the circumstances in which it lives. Things once taken for granted are open to decision-making.[183]

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[182] Giddens, Anthony; Sutton, Philip W. (2013): *Sociology*. 7th ed. Cambridge: Polity, p. 101.
[183] Ibid.

The German sociologist Ulrich Beck would call this the **risk society** or the society of the **unfinished or second modernity** and the mass character of **dramatic individualization** society. According to Beck, society is not yet done with the modernity phase of its existence, individualization is not new *per se;* it is just in a dramatic phase in the form of 'labor market' individualism[184] and the worst thing is that 'we do not know what it is we do not know'.[185]

According to Beck:[186]

1. Institutions of modern society – science, state, business and military – attempt to anticipate what cannot be anticipated;[187]

2. Risks and hazards[188] have developed into a chain of unforeseen secondary effects[189] and the focus is on addressing secondary effects and not the real sources of uncertainties.[190] Genetic modification, communications technology, and artificial intelligence have also paved the way for the evil to make its place.

3. Rationality encourages the anticipation of the wrong kind of risk;[191]

4. The distant other is becoming the inclusive other – not through mobility but through risk;[192] the trustee now is the suspect;[193]

5. The self-evident is no longer taken as self-evident[194] and we have to add to knowledge imagination, suspicion, fiction, and fear;[195]

6. The high price is paid by the civil rights and liberties;[196]

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[184] Sørensen, Mads P.; Christiansen, Allan (2012): *Ulrich Beck: an introduction to the theory of second modernity and the risk society.* London and New York: Routledge (Routledge Advances in Sociology), p. 8.

[185] Beck, Ulrich (2006): Living in the world risk society. A Hobhouse Memorial Public Lecture, 2/15/2006, p. 329. Available online at:
https://www.skidmore.edu/~rscarce/Soc-Th-Env/Env%20Theory%20PDFs/Beck--WorldRisk.pdf.

[186] Ibid.

[187] Ibid.

[188] Beck makes a distinction between 'risks' and 'hazards'. According to him hazards are the byproduct of people trying to dominate the nature and make further discoveries. With the technological development, nanotechnology, etc., we have created more and greater risks and hazards by trying to dominate the nature.

[189] Beck, Ulrich (2006): *Living in the world risk society.* A Hobhouse Memorial Public Lecture, 2/15/2006, p. 330. Available online at:
https://www.skidmore.edu/~rscarce/Soc-Th-Env/Env%20Theory%20PDFs/Beck--WorldRisk.pdf.

[190] Ibid.

[191] Ibid.

[192] Beck, Ulrich (2006): Living in the world risk society. A Hobhouse Memorial Public Lecture, 2/15/2006, p. 331. Available online at:
https://www.skidmore.edu/~rscarce/Soc-Th-Env/Env%20Theory%20PDFs/Beck--WorldRisk.pdf.

[193] Ibid., p. 336.

[194] Ibid., p. 331.

[195] Ibid., p. 335.

[196] Ibid., p. 330.

The late renowned Polish sociologist **Zygmunt Bauman** would use another all-catching world to describe society today: *liquidity*. To him, the network of the sources of uncertainty is made of:

1. *The passage from a 'solid' to a 'liquid' phase of the modernity*: into a condition in which <u>social forms</u> can no longer and are not expected to keep their shape for long, because they decompose and melt faster than the time it takes to cast them. By social forms Bauman refers to the social structures that shape individual choices, the social institutions that guard repetitions of routines, and the patterns of acceptable behavior. According to Bauman, 'these forms are not given enough time to solidify and cannot serve as frames of reference for human actions and long-term life strategies'. Lacking stability and continuity, they loose the power of predictability and foreseeability, which is primary to certainty. With these liquids forms, in this admittedly shaky ground on which are life prospects are presumed to rest, how is one to count for a safety net where needs are being fulfilled?

2. *The separation and pending divorce of power and politics.* According to Bauman, politics and power are moving toward opposite directions, where power is becoming global and politics still remaining local. The local political power, still conferred to the state by its constituency, is losing legitimation due to human interaction moving away to the politically uncontrolled global space, while local politics actions and undertakings become less and less relevant to the problems the citizens face in these interspaces. This 'reality' forces the states, in Bauman's term, to 'subsidiarize' and 'contract out' a growing volume of the functions they previously performed and they become a playground for the capricious and inherently unpredictable market forces and/or are left to the private initiative and care of the individuals.

3. *The gradual and consistent withdrawal or curtailing of communal, state-endorsed insurance against individual failure and ill fortune*, which saps the foundations of solidarity. According to Bauman, 'the individual exposure to the vagaries of commodity-and-labor markets inspires and promotes division, not unity, while collaboration and team-work degrade into stratagems that need to be suspended or terminated the moment their benefits have been used up'. Society is more a network than a structure, not to talk about solid totality.

4. *The collapse of long-term thinking, planning and acting, and the disappearance or weakening of social structures in which these processes could be inscribed for a long*

time to come. People's life is being compartmented into short-term projects and episodes, which do not combine into the kind of sequences to which concepts like development, maturation, career, or progress, all suggesting a preordained order of succession. In this process, even the learning process seems somehow useless and the memory induced to short-term conservation. In this respect, it is deducible that there is a lack of order in making things and chaos certainly is the enemy to certainty.

5. *The responsibility for resolving the quandaries generated by vexing volatile and constantly changing circumstances* is shifted onto the shoulders of individuals who are now expected to be 'free choosers' and to bear in full the consequences of their choices. The risks with every choice transcend the comprehension and capacity of the individual to act alone; still the price has to be paid by him. The individual is 'required' to be flexible and not conform to the rules.

These are the characteristics of the liquid society according to Bauman, a society that wants to be liberated of and dismantle borders and wants to be open, in initial Popper's terms; a society, which wants to apply its faculty to move, but which is lost in this move that is mainly 'used' for trade, surveillance, violence and weapons, crime and terrorism, creating a 'negatively globalized planet'. This openness has created a heteronomous, hapless and vulnerable population confronted with, and possibly overwhelmed by forces it neither controls nor fully understands; a population horrified by its own undefendableness and obsessed with the tightness of its frontiers and the security of the individuals living inside them.

Bauman somehow 'blames' human beings themselves as the motor of the fear perpetuating, through their activities that reaffirm and help produce the sense of disorder that those same actions are aimed at preventing. The actions prompted by the fears supply all the motivation and energy for fear to reproduce itself, creating more fears and uncertainties, in the deceiving process of addressing fears because of the fears to live fears. This fear is the result of the initial existential quake and the following quakes accompanying human existence, but decupled from the initial source of anxiety. Since this source remains somehow eternal, and no effort can neutralize or block it, something, which we are well aware of, the vicious cycle of fear and fear-inspired actions rolls on.

In this impotent state, we focus on things we can, or believe we can, or are assured that we can influence, calculating and minimizing the risk that we personally, or those nearest and dearest to us at that moment. We seek substitute targets on which to unload the surplus existential fear. This state is the best environment for the success of marketing and political users, which are garnering enormous economic and political profits from the concentration of attention to the personal safety (more to say, bodily).

Going back to the hierarchy of needs of Maslow, we can draw parallels with the shifting from on higher level of needs to lower levels, due to the return of the fear for the uncertainty and risk of needs not being meet or the threat being present. According to Bauman, in this state, the concentration has shifted from the level of security to that of safety, that is of being sheltered from, or exposed to threats to one's own person and its extensions. The state, in place to defend against the existential tremors – given that the optimal levels of addressing existential insecurities rests on collective foundations - has abandoned the functions, which were supposed to be delegated legitimately, to the uncontrolled market forces, reducing its response framework to a 'personal safety state'. It is thus leaving the individual to seek, find, and practice individual solutions to socially produced troubles. The sites of political power are advising the individuals to more flexibility, as the sole cure for the uncertainties of the future, while leaving it alone and more impotent, creating thus more uncertainty. The politics is encouraging the individuals to focus on their survival.

The central point of both Bauman and Becks theories is the impact that the labor market is having on the individual and its network.

In the recent theories of leadership, researchers speak of the VUCA world, VUCA standing for volatility, uncertainty, complexity and ambiguity. What do characterize the evolution of the modern society, Giovannella Greco maintains in her edition 'La svolta communicativa', is complexity, pluralism, deinstitutionalization, and perpetual movement, and chaotic order,[197] which nourish a permanent condition of uncertainty.[198]

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[197] Greco, Giovannella (2008): *La svolta comunicativa. Uno sguardo sull'universo giovanile.* Roma: Aracne (Scienze politiche e sociali, 0188), p. 10.
[198] Ibid., p. 11.

We hear of the world society as the *information and insurance society*, a world of chaotic information, often fake news and untrusted sources. The mass media is hungry for catastrophes.[199] Media is one of the main channels scientific work is delivered to the public sphere. It has a major influence in how people perceive and interpret what is happening in the world. It is said that something new does not make news if it is not bad news. In an edition titled 'Communicating uncertainty: media coverage of new and controversial science',[200] the authors maintain that most of the time, media either inflates or downplay uncertainty, making serious scientific work findings look unreliable or amplify the results of a finding which may have no second confirmation.

Scientific work is difficult to understand; therefore media is seen as an interlocutor between the scholar and the layman. The truth is science has developed a language, which is understood only by those belonging to the club. Indeed, science is for the society and it should take this audience well into account. Since the work is left on the hands of the media, the shortcomings or disadvantages should be wary of and should pay the price.

Sometimes, the authors continue, stakeholders, owners, or advertising will pressure a media organization to promote the business aspects of a scientific issue, and therefore any uncertainty claims that may compromise the business interests are downplayed or eliminated.

I. 6. 2 Addressing or Copying with Uncertainty at the Regional and Global Level

What all these accounts have in common, is a human or world society rendered unpredictable and where human bonds make no longer a very stable and reliable safety net. As Beck would say, the responsibility and burden of the decision-making is left to the individual, who is often deceived by the perceiving liberty and freedom of autonomy. This is a world in chaos.

The tendency, even in this transnational and international space, and this chaotic reality, is to create rules and roles. The world now is a world of *networks*, which are institutions with their own rules and roles. The subject is the individual and despite all the positive aspects of acting in relatively full autonomy and making advantage of the right to self-determination, these

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[199] Beck, Ulrich (2006): *Living in the world risk society*. A Hobhouse Memorial Public Lecture, 2/15/2006, p. 336. Available online at
https://www.skidmore.edu/~rscarce/Soc-Th-Env/Env%20Theory%20PDFs/Beck--WorldRisk.pdf.
[200] Cited in the Wikipedia page about uncertainty.

networks, in the end, live the burden and the problems and challenges with the individual. Trust and words of honor have to make their way back to the vocabulary and agenda of everyone.

But before let's reiterate and stress what is certainty and what do we need to be certain for. It is beyond any doubt that certainty is basic for the preservation of self and society through the creation of the social environment.

- Certainty is and requires order and knowledge authority.
- Certainty through conscious mind.
- Aesthetics/harmonious – the mosaic of the structures.
- Certainty that basic human needs will be met

The crucial point or the vital question would be: *who* and *what* and *how* is it to make certainty in this global chaotic order?

The next chapter turns to one of the traditional and modern ways people have developed to reduce or avoid uncertainty: *the law*. The model of comparison provided by this chapter will serve as a guide for evidencing the commonalities and advantages of law with regard to the other mechanisms addressing uncertainty at the individual and social level.

CHAPTER II   **LAW ADDRESSING SOCIAL UNCERTAINTY IN PRIVATE RELATIONS AT THE LOCAL AND GLOBAL LEVEL**

II. 1   Introduction

As seen in Chapter I, individuals and societies seek knowledge, order, and guidance from authoritative sources, which create rules and roles and common shared expectations, for their behavior/action and decision-making. Chapter II will take a closer look at how law[201], as a social mechanism for addressing social uncertainty, adopts and incorporates these 'strategies' of copying with or addressing uncertainty in private relations. It will first look at why law came into existence (the initial purpose), how it makes certainty (the 'stable' patterns), barriers to its purpose and from/to its patterns, and why it remains the optimal source of social certainties in the personal relations in the face of challenges posed at the local and global level.

The chapter will focus on:

    a. Law's *raison d'être*;

    b. Law's commonalities with other social mechanisms addressing uncertainties;

    c. Law's advantages compared to other mechanisms; and

    d. Law's disadvantages or barriers in making certainty *per se* and at the local and global level.

II. 2   Law's Purpose or Raison d'Être

Section II. 1 endeavor to addresses questions such as *what is law?* and *why it came to exist?* The objective is to evidence psychological reasons behind law's *raison d'être* and its traditional purpose or contribution to society.

The question of the nature or essence of law has long perplexed legal and political philosophers.[202] A long-lasting debate on the definition of law exists[203] between different

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[201] This thesis refers to the state-made law.

[202] Wollheim, R., cited in Freeman, Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence*. 17. ed. London: Sweet & Maxwell, p. 67.

schools of jurisprudence. Therefore, defining law and answering to why it ever came into existence demands for an elaborated textbook and this is neither the aim nor the ambition of this thesis. The debate rests on two pillars: first, on the inability to agree on common traits of law in all societies and second, on the inability to agree on the authority or the source(s) of law (understood as principles and statuses).

The main classical schools defining law were the natural law school and the positivism school, followed by the more recent school of sociological jurisprudence and/or legal sociology. Natural law school takes a lot from philosophy and religion, and using Auguste Comte's terms, it flourished in the theological and metaphysical stages of society development.[204] The main tenet of this school is that law as action derives from principles which are *inherent* in the being, equating law with moral. Plato, an early natural law proponent, spoke of the ideal universals or the essential or fundamental nature *common* to members of a certain class.[205] Simonton, another proponent of the natural law, in its early writing 'On the origin and nature of law', stated that the word *law* itself acquires different meanings in different contexts, but what unites these meanings is the idea of something *stable* which *repeats* itself as to become the characteristic of something or inherent in the matter, 'such as the laws of nature, gravity, motion; the laws of morality',[206] etc.; or 'the idea of *uniformity of cause and effect* or '*like conditions producing like results*' such as the laws of trade, etc. [207] In any case, it is used to describe 'properties, relations or conditions *existing everywhere in the physical, mental and moral world*',[208] properties which are there and only to be discovered by us.

Natural law school views were opposed by the positivist school that saw law as mainly a *social construction* originating in social agreement and rejected the idea that law has or should have something to do with morals. Again using Comte's terms, the school flourished

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[203] Sir Frederick Pollok, in his First Book of Jurisprudence, is cited to have said that what is law pertains to the domains of those ideas which seem to be most simple but which are really the most difficult to grasp with certainty and express with accuracy. Cited in Simonton, J. W. (1902): On the Origin and Nature of Law, in *The Yale Law Journal* 11 (4), p. 195. DOI: 10.2307/783571, p. 195.
[204] Freeman, Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence*. 17. ed. London: Sweet & Maxwell, p. 661.
[205] Ibid., p. 40.
[206] Simonton, J. W. (1902): On the Origin and Nature of Law, in *The Yale Law Journal* 11 (4), p. 195. DOI: 10.2307/783571, p. 195.
[207] Simonton, J. W. (1902): On the Origin and Nature of Law, in *The Yale Law Journal* 11 (4), p. 195. DOI: 10.2307/783571.
[208] Ibid.

in the scientific or positive stage of human development.[209] Hume wrote of law as a developing *social institution* originating in social convention.[210] Other positivists such as Austin, Kelsen, and Fuller, also contributed to the understanding of law and its essence and nature. Their work concentrated on the source or the authority of law or what is that validates law. For Austin law is a set of commands, which go in one direction: from the sovereign to the obedient. Very compelling is the concept of law elaborated by Hart in its *Magnum Opus* 'The concept of law', which places law in a social context. It sets the path for what is now the sociology of law, as opposed to Kelsen's 'Pure theory of law', who saw law neither as a social construction nor as a human inner need, but having a life of its own. For Hart law does not go only in one direction (criticizing Austin), applies to those who make them as well, and cannot be understood only from law's inferences. For Hart, law's justifications are not social constructions, which posit him somehow between natural law and positivism.

Legal sociology is a relatively recent sub-discipline within sociology, which takes insights from this empirical discipline. Luhmann, one of the most renowned legal sociologists, saw law as an auto-poietic communicating sub-system within the society, which is structurally coupled with other sub-systems, such as the political sub-system which produces the laws, but needing to be closed and differentiated from those sub-systems in order to best serve its purpose, which is to produce normative expectations (or, in my understanding, behavioral expectations). He recognized the difficulties in achieving a closed system of laws, since the sub-systems, which it is structurally coupled to, are not functionally differentiated. Luhmann speaks of 4 levels of normative expectations law communicates and ensures: expectations from values, rules, programmes, and individuals. He was highly influenced by Talcott Parsons, a functionalist sociologist, who saw as the main function of law the integration of potential elements of conflict.[211] Brian Tamanaha, another legal sociologist, sees the difficulty in defining law as stemming from the purpose for which we define law as well as the function it serves.[212]

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[209] Freeman, Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence.* 17. ed. London: Sweet & Maxwell, p. 661.
[210] Ibid., p. 660.
[211] Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence*. 17. ed. London: Sweet & Maxwell, p. 681.
[212] Tamanaha, Brian Z. (2007): Understanding Legal Pluralism: Past to Present, Local to Global. In *Sydney Law Review* Vol. 29, pp. 375–411. Available online at http://ssrn.com/abstract=1010105, pp. 391-393.

The debate also entangles the issue of whether law developed in almost all of societies or was transposed to different societies through communication of cultures. Alan Watson is known for its work on legal transplants, and the emphases that law is inspired by foreign policies and experiences and diffuses to other cultures and spread just like 'Christianity through the crusades'.[213]

One thing is for sure: rules have existed everywhere or as Mr. Bishop early on stated: 'we can conceive of no such thing, and no such thing can be, as man in the society without law'.[214] As Luhmann would say, law was first the legal disputes and then theorizing about them.[215] It is certainly difficult to establish whether human beings were able enough since the beginning to establish rules for the action they were to undertake. As the thesis has maintained from the beginning, we are in this world without a book of guidance and instructions, and this may lead mainly to the idea that law derived from practice first and foremost. Then practice has guided the need for principles and rules to guide the behavior and interaction with one another or as Simonton says 'the body of principles and rules recognized and enforced by the courts by which the relations of the members of the community with each other are regulated'.[216] These principles had to be maintained by the repetition of the same practices and understanding in practice of what is desirable or wished and what is not. So, laws are made taking account of many precedents.

Given that, as expected, the views of different scholars diverge and converge on defining law, what remains important is to understand its meaning[217] or the purpose it serves in society.[218] In my judgment, law's purpose or contribution in society is 'to make optimal objective and subjective certainty',[219] addressing objective and subjective sources and realities of uncertainty as discussed in Chapter I. Law is one of the domains or ways Hofstede recognizes

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[213] Authors' claim.

[214] Simonton, J. W. (1902): On the Origin and Nature of Law, in *The Yale Law Journal* 11 (4), p. 195. DOI: 10.2307/783571, p. 203.

[215] Luhmann, Niklas; Ziegert, Klaus A.; Kastner, Fatima (2008): *Law as a social system*. 1st published in pbk. 2008. Oxford, New York: Oxford University Press (Oxford Socio-Legal Studies), p. 3. Legal theory and law as we know it now, mainly in the written form and statutes, came into existence later to understand law and legal practice and to reinforce the norms.

[216] Simonton, J. W. (1902): On the Origin and Nature of Law, in *The Yale Law Journal* 11 (4), p. 195. DOI: 10.2307/783571, p. 198.

[217] By meaning I refer to its philosophical sense, the purpose and contribution a system or phenomenon brings with its existence, that justifies its existence: the raison d'être.

[218] This is a view, which I firmly hold for every social or human construction.

[219] It is the pervasive idea of the thesis that complete certainty is neither achievable nor desirable. Whenever it talks about certainty it implies optimal certainty, the golden medium.

as developed by human society to cope with the inherent uncertainty,[220] understood as '*all formal and informal rules that guide social behavior*'[221] that 'helped us defend ourselves against uncertainties in the behavior of the others'.[222]

There is lack of scientific endeavor to define law or scholar debate on law made on psychological basis or starting from psychological grounds. Whenever I make research on law and psychology, [223] the coupling results in psychological findings 'borrowed' to understand practices in criminal proceedings and deviant behaviors. There is a lack in approaching law from a scientific psychological point of view, just like sociological jurisprudence and legal sociology do. Taking these latters example, I wish for a psychological jurisprudence and legal psychology to be developed from both disciplines, conceptual and empirical understanding of the psychological reasons that brought to the birth of law in the society and the empirical data of how law and society mutually affect each other. This chapter endeavors to bring forward some arguments on why law has psychological roots for existing. It is the author's firm belief that law came into existence to make certainty among people before their deviant behavior and crimes come to action and it is the challenge to understand law before people make use of it.

What misses is a school or division of a school talking about the empirical findings of psychology. There exists no school/division of thought on the psychology of law, even though psychology is and should be the basis for explaining human behavior and social constructions, such as law(s).

Yet, it appears that all of the three-abovementioned schools of legal thought have psychological 'traces' in their approaches. Natural law school speaks of principles that are inherent in the being. Positivists speak of social construction highly studied in social psychology as outer forms of behavior expression. Comte spoke of 4 means of social investigation, namely observation, experiments, comparisons, and historical method, to understand the laws of the human nature; methods which are widely used in psychology. Roscoe Pound spoke of law as a *social engineer* who norms or frames or creates human

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[220] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 146.
[221] Ibid.
[222] Ibid.
[223] My research at the library at Max Planck Institute in Hamburg and Oxford University Social Sciences Library has resulted in few titles concerning psychology in criminal proceedings.

behavior and reconciles conflicting interests; so does Jhering who speaks of law as an instrument for serving the needs of the human society and reconciling individual and societal interests and values which clash and need to get prioritized. Selznick tried to bring sociology closer to natural law and claimed that there are universal values which law should take well into consideration if it is to succeed.[224] Luhmann speaks of normative expectations. These statements have all their psychological implications. They are more at the *a priori* and conceptual understanding level, very much of use to a psychological jurisprudence, with not much empirical data involved and this is understandable given the period in which these approaches developed, where psychology had not yet achieved today's independence and empirical dimensions. The newly accounts of legal psychology or psychological jurisprudence should ground themselves in these findings and come together under the umbrella of the socio-legal studies.

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[224] Freeman, Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence*. 17. ed. London: Sweet & Maxwell, p. 683.

II. 3 Law's Operations: An Account for Addressing Uncertainty

Following the analysis and model provided for in the previous chapter on the common traits of individual and social mechanisms to address and cope with uncertainty, this section deals with those characteristics of law, which address social uncertainties from a subjective and psychological point of view.

Law ensures certainty as follows: it is the authority empowered with a structure-formation ability to organize social life in sequences or flow of action. These structures make order through regulating social interaction and guiding people in their behavior and decision-making. They create roles and obligatory rules.

We can think of the law produced in time as the result of the chain: **needs – values – interests – rules, roles, and norms – law.** Human beings are need-based beings and these needs represent the values of humans, what is of importance to us, as seen in Chapter I. In order to protect these values or satisfy the needs, society has created rules and roles which put limits to what is allowed or not, i.e. norms which frame our behavior (to avoid loss and pain) and guarantee the meeting of the needs (to ensure wellbeing). These frames, the recurring of rules and roles and actions create expectations, which are crucial to make decisions and undertake action and interaction.

I tend to see law as the Freudian model of human psyche. Freud is famous for its 3-dimensional model of id, ego, and superego,[225] where ego is thought to be the balancing force between id and superego: the selfish individual or the inherent instincts which drive us vs. the fulfillment of our inner interests, and the societal or the social norms and rules taught to and learned by the children in their process of socialization. Law can be seen as the balance between the desired and the desirable. This is to be further elaborated in Chapter III, but we have to keep in mind that law should well take into account both their weak aspects and balance the two. Law can also be thought of as a ritual, which is repeated with the hope to produce a certain desired outcome or avoid undesired ones.

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[225] Ego and superego are later creatures, whereas id was born with the being. Ego is not the negative connotation we hear when talking about egoism or egocentrism. It is the *-ism* ending which makes the difference. It has evolved with the evolution of human consciousness.

We might also think of law as a nervous system with a center (the coordinator of actions and the order-issuer) and the signaling ways and structures. This is a systematic and functional view of law, following the functionalist perspective in sociology, as well as analogous to a communicating structure. Law is the sender of the message and the message itself. It has its channels of communication and its barriers. The receivers and feedback senders are numerous, but the end-users are the citizens. The process continues in a cycle. Law is a sender and a receiver.

All these accounts may have their opponents, especially the communicating model, recalling again Luhmann and its theory of law as a closed system.

II. 3. 1   Law as Social Mechanism: its Properties making Certainty and the Advantages

Social scientists maintain that there are several regulating or normative orders that operate within a society[226] and law is not any different from them. This section compares law to other social mechanisms and evidences its advantages in order to demonstrate the importance and uniqueness of law. It answers to why law is the most appropriate tool for making certainty in private relations at the local and global level and how does law achieve it.

Religion, technology, customs and social structures are all 'authorities', which try to make certainty for existential, natural, and social uncertainties. We've also seen that they have not properly succeeded in addressing or reducing uncertainty. In Chapter I, the panorama for the 'troubles' religion and technology have come to produce, putting society in what Bauman called the 'cycle of fear'[227] has been introduced. Customs and social structures have no binding force or mechanisms, though group forces and pressures have a high influence in human beings,[228] often more than the law itself.

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[226] Tamanaha recognizes 6 categories of normative orderings: official or positive legal systems; customary system, religious system, economic/capitalist systems, functional systems, and community/cultural systems, in Tamanaha, Brian Z. (2007): *Understanding Legal Pluralism: Past to Present, Local to Global*. In *Sydney Law Review* Vol. 29, pp. 375–411. Available online at http://ssrn.com/abstract=1010105, pp. 391-393.

[227] Bauman, Zygmunt (2007): *Liquid times. Living in an age of uncertainty*. Cambridge, Malden, MA: Polity Press.

[228] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson (Always learning).

The advantages law has compared to the other mechanisms (read in a non-excluding manner) are:

II. 3. 1. 1   *Law: the Centralizing and Pervasive Authority*

Law's authority or legitimacy derives from a form of consensus among human beings.[229] It is the authority that we have created and placed above us (at a supra level). We perceive that there is something there beyond and above us: the law. It is like the Holy Spirit created by us, feasible and doable; concrete and ready to take action when needed. This is the spirit of law, as I understand it.

It extends everywhere and pervades all areas of society and life. It has an all-inclusive jurisdiction. It operates at an all-inclusive or universal level, e.g. applies the same to everyone, subcultures included, at least in theory.

People need authority to follow it and to make important decisions for them.[230] Law is doing so by regulating many areas of public and private life. And, being a centralized authority, it makes certainty because there is one center to turn to in cases information or solution is needed.

II. 3. 1. 2   *Law: the Knowledgeable Authority*

Law is the knowledgeable authority and a reliable source of information. It is the information seeker and information provider. Law can make use of all the scientific sources and methods of reasonable argumentation to be a knowledgeable authority. Law is definitely taking from other sciences; e.g. when law speaks of the legal age to enter marriage, we see that, though it mainly differs slightly from culture to culture, the age is related to the status of maturity, which relies on psychological findings to acknowledge so. Will and error are psychological concepts as well. We can continue to enumerate other law's feature borrowing from other sources or disciplines. The fact that in the law-making process experts of different sciences, such as engineers, environmentalist, etc. are called for, demonstrates the need to cooperate

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[229] We can say that religion is a form of coercive authority.
[230] People need others to make decisions for them in this world of excessive information, or the blooming-buzzing confusion (Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology.* 8. ed., new internat. ed. Harlow: Pearson (Always learning, 65).

with other knowledgeable source. Law has the ability to pervade and centralize all these disciplines.

II. 3. 1. 3   *Law: the Creator of Future Normative*

Law in theory does not create behavior; normally it regulates behavior since it sets norms and tolerance boundaries to human behavior and by this fact we know in advance what we can and cannot do and make decisions. This means that law, through conditioning human behavior, somehow creates future normative behaviors. Law, as Jan Broekman maintains in his works on semiotics of law, 'moved from in the world, to a position where it makes the world'.

Law creates rules and roles. According to Charles Perrow, 'rules stem from past adjustments and seek to stabilize the present and the future'[231] and try to make the behavior of people predictable.[232] Rules are guidelines to follow whereas roles are rules about who does what and when. Law does create relatively stable legal rules and legal roles, which generate legal expectations that are presumably evenly understood by those whose law is directed to.

Law provides relatively stable long-term schemas, which are a very important psychological unit for making sense of the world we live and orient and guide us beforehand. Human beings, when undertaking an action, do always think of the consequences it might have. Thinking in advance and with the end in mind is crucial for framing the limits of the acceptable and the non-acceptable, the benefits and the sanctions. Law makes our automatic thinking easier.

Law creates expectations for the right and wrong forms of interactions before entering them. Authority is also understood in terms of a system, which is there, and we expect it to be acting upon the triggering of the due mechanisms. Law's existence is the perception that action will be taken and justice will be made anytime.

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[231] Cited in Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 147.
[232] Ibid.

II. 3. 1. 4   Law: the Impartial Authority

Law has the ability and possibility to remain impartial and fair. Being away and distanced from, taking a formal stand and not having any affective relation with the people, it has the possibility to remain cold in the face of biases/inclinations. Since law is the controlled thinking, something produced through reasoning processes, it is the reason free from passion, as Aristotle is learned to have said. Furthermore, since decisions are taken by judges who, theoretically, have no emotional involvement with the parties in a case and are expected to act in pure mental and emotional clarity, they should be giving or making justice.

Law itself does not have needs and does not have egoistic interests since it is an artificial creature. Being a non-human creature, it does not have psychological or affective implications.

Law can evoke justice – create the perception of trust. It does this through procedure or procedural justice – from law making till law enforcement. The whole process of making the law sets the premises for making justice. And even if in the end the outcome won't be on one's side or wished, s/he will be convinced that the law operated fairly. As James R. Maxeiner maintains, 'legal certainty importance derives from being an omnipresent guiding idea protecting personal autonomy, where long before individual decisions are reached, legal certainty has already considered how those decisions will be made.[233]

It is important here to shortly mention the relationship between law and morality. Law is the author who tells us what is right and wrong. Bentham and Austin maintained that positive law is quite distinct from and its validity in no way dependent upon morals.[234] Kant regarded morals as prescribing internal conduct, referring to motivation, whereas law as prescribing external conduct[235]. Yet it is difficult to say when law ignores subjective considerations. Luhmann would speak of the legal/illegal as the codes of reproduction of the law within its system.[236]

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[233] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 553.
[234] Freeman, Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence*. 17. ed. London: Sweet & Maxwell, p. 48.
[235] Ibid., p. 49.
[236] Luhmann, Niklas; Ziegert, Klaus A.; Kastner, Fatima (2008*): Law as a social system*. 1st published in pbk. 2008. Oxford, New York: Oxford University Press (Oxford Socio-Legal Studies), p. 17.

Law is mainly made through reasonable thinking and based up to a certain level on empirical data. Still, it is not realistic to distinguish law completely from moral, since we are the authors of both of them. Morality, in some ways, Freeman maintains, is an integral part of law or of legal development.[237]

Moral sanctions may at times be stronger than legal sanctions. The phenomena of group cohesion though not agreeing in many respects with its members and/or practices is but one example, related to maintain a positive self-image and justifying proper decisions and choices, as mentioned a little earlier. Furthermore, legal and moral principles may overlap, such as the principle of equality or no-harm.

II. 3. 1. 5   *Law: the Written Authority whose Author is Known*

The written aspect of law makes it a record we can return to any time we need to. Writing has been one of the main features of the human evolution, and certainly differentiating the humans from the other beings. A lot of debate can be put forward in this section concerning the issue that law is not always written. People love to say that UK does not have a written constitution, but this is completely misunderstood or misinterpreted or misguided. It might be UK lacks an act where all the principles get together, but they are there, dispersed in other acts and case law. Thanks to this feature of law, we can make research back in time and legal theories to understand and explain law's existence and action came to life.

II. 2. 2   Legal Certainty

By enabling the abovementioned, law keeps up with the principle of *legal certainty*. The principle implies that any actions of the state affecting the individual must be foreseeable,[238] while the individual needs legal certainty in order to make arrangements that correspond with the law.[239] According to OECD, the concept of the rule of law "first and foremost seeks to emphasize the necessity of establishing a rule-based society in the interest of legal certainty and predictability'.

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[237] Freeman, Michael D. A.; Lloyd, Dennis (2005): *Lloyd's introduction to jurisprudence*. 17. ed. London: Sweet & Maxwell, Jurisprudence, p. 49.
[238] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 180.
[239] Ibid., p. 181.

Professor Andreas von Arnaud claims that legal certainty is a guiding idea or leitmotiv ('idée-directrice' or 'leitgedanke') to be found in every modern legal system, though incorporated at various degrees into the positive law of different legal systems.[240] It is often maintained that legal certainty is a German 'phenomenon',[241] but it is a principle so general that it cannot really be ascribed to any particular national source.[242] Yet, considering the fact the legal certainty has achieved its close-to-ideal shape in the German legal system, it can be said that the principle is very dear to the Germans. And, as emphasized in the section dealing with how different societies deal with uncertainty and the role that historical occurrences have had in the specific ways societies have chosen to face it, we may deduce that the need for certainty has been high for the German community which has lived for a long time in political fragmentation.[243]

Taking a look at how different European languages have introduced or adopted the phrase into their vocabulary, we note:

In Albanian, the term closely related substantially to and part of the legal principles, especially of the procedural law, is *siguria juridike.* Translating the term, it is noted that it is more similar to the French term '*sécurité juridique'*. The word *siguri* in Albanian means 'security' in the sense of something being certain, sure, that will happen or take place. It also means safety. In German the term used, '*rechtssicherheit'* or the security of law, suggests security or reliability as well as certainty.[244] It includes both certainty of orientation and realization.[245] In Italian the term used is '*certezza del diritto'*, translated mot-a-mot as the certainty from law (jus). The Spanish language uses the term '*securidad juridica'*. We notice that the Albanian, French, and German wording focus more on the security the law provides from the unlawful actions, whereas the Italian, the Spanish and the English wording rest more on certainty. Even though, in all of these countries, the term legal certainty, in my understanding, comprises the two main components: legal clarity and legal security and

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[240] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 553. The thesis does not imply that legal certainty is received with the same degree of acceptance.

[241] Ibid., p. 550.

[242] Ibid.

[243] I strongly believe that all countries or communities facing political fragmentation or problems, such as Albania, are clearly in need of a well-founded principle of legal certainty in the legal system. The thesis will take on this a little further when discussing on the future challenges and possibilities of law.

[244] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 553, footnote No. 71.

[245] Ibid.

safety. Legal certainty is both the clarity of the language, the references it makes, and the process, which makes certainty of the procedures to follow, mostly important. Legal clarity is very important and the alpha of everything, but so is important the security and safety of law,[246] in theory, as anticipation and expectation,[247] and in practice, during the procedure and the application of law.[248] Luhmann maintained that legal certainty is addressed either by the law or the court.

Law cannot make certainty for the outcome; that would be unreasonable. In order for people to trust in law and the legal system, it is important to trust that the procedure or the path to follow when making use of the law or requesting for solution or justice is properly and fairly followed. This way legal certainty is connected to legal fairness.

Legal certainty within the law is coherence or formal certainty (legislators and law-makers should take care), while outside is clarity and predictability, for the end-users and judicial or substantial certainty (in the court). Legal certainty is connected to foreseeability and predictability.[249]

Legal certainty, as a general principle of the European law requires that those subject to law must know what the law is so that they can abide by it and plan accordingly.[250] Legal certainty is an established principle in all of the founding states of the EU.[251] It is a 'general principle' of the EU Law[252] and among a handful of legal principles jurisprudence of the European Court of Justice has recognized.[253] This latter gives the principle of legal certainty considerable importance in its case law and has referred to legal certainty in many hundreds of its decisions.[254] In the EU legal order and discourse we find legal certainty often linked to

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[246] Maslow has placed security and safety at the second level of its hierarchy of needs, as explained in Chapter I.
[247] Or primary predictability, Kruger, Thalia (2014): *Legal certainty in international civil cases*. Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.
[248] Secondary predictability, Ibid.
[249] Kruger, Thalia (2014): *Legal certainty in international civil cases*. Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.
[250] Tridimas, Takis (2006): *The general principles of EU law*. 2nd ed. Oxford: Oxford University Press, p. 242.
[251] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 550.
[252] Ibid., p. 547.
[253] Ibid. Among the cases we can mention Case 120/86 Mulder vs. Minister van Landbouw en Visserij, of 1988, cited in Craig, Paul; Burca, Grainne de (2011): *EU law: text, cases, materials*. 5th ed. Oxford: Oxford University Press, p. 536.
[254] Ibid., p. 548.

the principle of legitimate expectations and the non-retroactivity. Legal certainty is a guiding principle of European legal system.[255] In the case Korchuganova vs. Russia, the Court states that 'it requires that all law must be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'.[256] The ECtHR case Winterwerp vs. The Netherlands is a landmark case speaking of legality or legal certainty.

II. 2. 2. 1   *Legal Certainty in Germany (Rechtssicherheit)*

Legal certainty is a principle of constitutional rank in Germany,[257] where making certainty out of law is closely related to the legal methods and they should keep improving and not get discouraged by the imperfections. Two sub-principles derive from the principle of legal certainty in the German legal system: the sub-principle of *Bestimmtheitsgrundsatz* or the principle of certainty and clarity[258] and the sub-principle of *Vertrauensschutz* or legitimate expectations. The former is strictly linked to the language of law and its preciseness, whereas the latter is more concerned with non-retroactivity: future laws will not change abruptly and bring negative consequences regarding actions or situations which have happened in the past, such as e.g. changes in the tax law. The German legislation makes a different between 'real retroactivity' and 'unreal retroactivity',[259] the latter concerning actions or situations that have not been concluded.[260]

The German structure of legal methods – systematic norms applied syllogistically – promotes legal certainty.[261] Legal certainty is provided in all of the phases of law: the law making, law

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[255] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), 541–607 & 550.

[255] Ibid., p. 543.

[256] Korchuganova vs. Russia, No. 75039/01 of June 2006, cited in Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 543.

[257] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 550.

[257] Ibid., p. 553.

[258] Langenscheidt Alpmann Fachwoerterbuch Kompakt Recht Englisch 2011, p. 480.

[259] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 184.

[260] Ibid.

[261] Ibid., p. 555.

finding and law applying. James R. Maxeiner[262] makes an exhausting and very clear description of the law life in Germany and how it ensures legal certainty.[263]

In German law and legal culture:

- rules closely tie specific results to specific pre-requisites;[264]
- the prior identification of deciding judges is a constitutional requirement,[265] enacted through an annual court plan for division of duties;[266]
- case groups of an almost common-law manner develop[267] to limit the discretionary power of the judges, which is appropriate only on the legal result, not on the state of facts.[268]

II. 2. 2. 2   Legal Certainty in Albania (Siguria Juridike)

Albanian constitution does not make explicit reference to the principle of legal certainty. It includes rule of law as an aspiration at the preamble.[269] The constitution explicitly forbids the retroactivity of laws on tax and financial obligations.[270] The principle of legal certainty is maintained as a legal principle of civil procedure and different legal provisions of the civil procedure code, mainly those on prescription, preclusion, decadence, res judicata and non-retro-activity.

Albanian legal order and law-making process is very similar to the German one, also because they belong to the same legal family, i.e. the civil law. Even though, compared to the German process of law making, Albanian has a lot to learn from and improve. The work prior to

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[262] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607.

[263] We will turn to the topic in the next chapter.

[264] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 559.

[265] Article 101(1) of the German Constitution.

[266] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 560.

[267] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 560.

[268] Ibid., p. 561.

[269] *Albanian Constitution* of 1998, amended, http://www.euralius.eu/index.php/en/library/albanian-legislation/category/9-constitution

[270] Article 155 of the Albanian Constitution of 1998, amended, http://www.euralius.eu/index.php/en/library/albanian-legislation/category/9-constitution

drafting the legislation has a lot of gaps, missing pieces, and the timing is always problematic, as most of it things are made in urgency. Research and comparative studies are not usually made (though it has to be mentioned that laws are often made with foreign expertise) and in the Ministry of Justice, though a Unit for studies and legal analysis at the General Directorate for the Codification exists, it is rarely performed, due to lack of time, staff, and expertise. Albanian public administration is highly vulnerable to the changes in the ruling party and high staff turnovers have been a main concern in several the European Commission annual progress reports, especially those following general elections such as the 2005, 2009, and 2013. These turnovers have highly affected the establishment of an expert administration, in place for meeting the third Copenhagen accession criteria, namely the administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership, preceded by the ability to properly manage the screening process and the acquis' chapters negotiations.

The consultation with different stakeholders is not properly performed, and this is mainly due to the urgency of making laws, as well as lack of expertise on the side of the stakeholders and lack of culture of consultations in the country.

These pitfalls have been highly evident in the process of drafting the laws[271] which are part of the reform in the justice system in Albania, which started in 2014, and where the Ministry of Justice theoretically has a role of paramount importance for assuring that organic laws and other laws respect the principles of constitutionality and legality. The process is highly led by the international community and the process of constitutionality and control by the Ministry of Justice has been lacking its involvement, characterized by high urgencies.

The Albanian Constitutional Court, whom decisions are binding on the lower courts, has developed a considerable case law on the principle of legal certainty.[272] The decisions have emphasized the importance of the principle of legal certainty as a constituent principle of the rule of law aspiration and as a principle implying credibility of citizens against the state. Yet, this Court, as with the judicial courts in the country, suffer from the high dependence on politics, and the decisions, even unintentionally at times, acquire political colors.

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[271] One law, which introduced the constitutional amendments, six organic laws concerning the judiciary, and 27 laws affected by the changes of the former seven ones.
[272] Cases no. 8 of 02.05.2006; no. 9 of 26.02.2007; and no. 20 of 29.09.2008 of the Constitutional Court. http://www.gjk.gov.al/web/Lista_e_Vendimeve_92_1.php

II. 4   Barriers and Challenges to Legal Certainty at the Local and Global Level

II. 4. 1   General Overview on Barriers and Challenges

Certainly harmony in the universe is the result/matter of millennia of evolution: lapse of time and making - breaking. So will law, go though trails and errors to find the equilibrium.

As mentioned above, in Hofstede's study on cultures, there were 3 components making up of the UA dimension of cultures: rule orientation, employment, and stress. All the three had to be in positive correlation with each other in order to indicate the state of UA in a country. Though people followed the rules, did not change job often, they level of stress did not seem to change much in the long run. Having more laws and rules does not necessarily leads to less uncertainty and stress.

This is best summarized in the description of Avila in its work on 'Certainty in law'.[273]

'... legal certainty is by no means a new topic. The debate in Roman law about ius certum, or about Pax Romana and the implied concepts of pax, securitas and libertas, ... contains a distant embryo of the study of certainty in law.

Almost intuitively it is clear that the mass of information is gigantic. Paradoxically this informative material both enables and the world to be better understood and contributes to an increase in uncertainty. ... more knowledge therefore leads to a growing feeling of uncertainty: citizens know more, but precisely because they know more, they also know what needs to be foreseen and what may not be confirmed in the future. The future, which used to be in God's hands, has ben placed by secularization in the hands of men, who must master it by planning and not by 'divination'. Moreover, modern society and more complex relations due to technological progress have augmented the future. The pursuit of certainty has made us more uncertain – another paradox. After all, too much information causes misinformation.

This kind of society is also characterized by the existence of a huge diversity of interests. Each individual seeks protection for their personal interests in the legal norms, as do a plethora of groups: women, immigrants, ethnic minorities, environmentalists, consumers,

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[273] Àvila, Humberto (2016): *Certainty in Law*. Law and philosophy library 114, Springer International Publishing Switzerland, pp. 3-14.

liberals, conservatives, industrialists, workers, exporters, and so on ad infinitum. ... each group lobbies for the enactment of norms that protect its interests. The number of norms tends therefore to multiply. ... worse still, the many groups' interests do not always coincide. On the contrary, they often collide, and the state has to try to coordinate them through the enactment of more norms. Thus the norms become not only more numerous but also quantitatively and qualitatively more complex; quantitatively because not only general and permanent norms are passed, but also exceptional norms (to govern the marginal cases), transitory norms (to govern cases provisionally) and transitional norms (to govern the transition between and a previous normative system and a subsequent one); qualitatively because such norms aim to solve technical and specific problems – from intricate tax problems to sophisticated environmental issues. Hence the reference in the literature to so-called 'value polytheism' i.e. the multiplicity of values that are present in the social environment and cannot be apprehended through absolute conceptual notions.

(The author goes on to explain the responsibilities the states should assume for the protection of the individuals, new tasks and functions, and the new level of intervention, followed by the multiplication of general (long texts spreading over many areas) and exceptional rules, new branches and sub-branches of law.)

'This constant division not only increases the complexity of law, but also creates the phenomenon of super-specialization: Professionals initially know more and more about less and less, and eventually know less and less about less and less.

The curious point is that this increased state involvement ... creates two paradoxes. On one hand ... in order to protect social security, the state must know everything, be able to do everything, and be allowed to do everything. But when that happens, it restricts freedom so much that it becomes another source of uncertainty, which it initially set out to banish. ... as a result individual autonomy paradoxically disappears. On the other hand, the problem of a lack of law is solved with more law, but more law causes other problems, with their own complexity and uncertainty. In sum, solution becomes the problem. ... combating uncertainty contributes to uncertainty.

... Once the state finds itself unable to perform all activities it has taken upon itself, it begins to privatize, liberalize and deregulate in order to open up these activities for competition.

This does not decrease the complexity of the legal order. ... Nowadays we first regulate, we then deregulate. When do we get to 'later'?

... The legal order thus becomes super-complex. Regulations become super-regulation ... Legislative activity earns the name of 'legal productivism'. It is even said that the rule by law has replaced the rule of law. It became commonplace to say that the legislator ought to think like a philosopher but write like a peasant. ... the opposite is the case today ... Lawmakers think like disoriented peasants and write like neurotic philosophers. Among other reasons, this is because of the highly frequent practice of cross-referencing between laws or provisions, as well as generic repeals.

... law is required in all areas, for all interests the result is 'legal totalitarianism'. Politics therefore operates under time pressure. And hurried legislation often takes on an experimental character. .... Laws are ceaselessly cranked out in machine-gun fashion. More often than not, these laws are so flawed that they must be immediately revised by the very same lawmaking body that enacts them.

This culture translates, on one hand, into a 'high speed society' in which decisions are made as if society were in a perpetual 'state of emergency'.

As already discussed in the first chapter and from the above description, full certainty is neither achievable nor desirable. It applies to legal certainty too[274]. Roman Herzog, former president of the German Federal Constitutional Court maintains that the idea of perfect legal certainty is mistaken because it presupposes three conditions that legislators cannot meet: (1) they must foresee and judge all the possible cases; (2) they must be able to classify abstractly all such cases so that none is overlooked; and (3) they must use a language so precise that it permits bringing all the cases identified in (2) within the judgment of (1).[275]

So, full legal certainty is inherently unachievable. This is the reason I speak about optimal certainty. Human beings make laws and this is a self-made system, which *par excellence* contains imperfections because of the unknown or partially unknown.

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[274] The postmodern thinking claims that there is no legal certainty (Kruger). So do the American lawyers and scholars, who have embraced the philosophy of legal indeterminacy (Maxeiner).
[275] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 555.

As the German legal philosopher Radbruch explained, there is antimony between justice, public policy and legal certainty.[276] Professor Thalia Kruger also maintains that public policy is the greatest issue with respect to legal certainty.[277] As we will see in the Chapter III, bringing closer legal certainty and justice is not an impossible task,[278] to be complemented by an education programme of the civil society and citizens.

Getting back to the analysis of uncertainty, we recall that uncertainty was:

- The unknown or the partially known;
- Doubt and ambiguity; the probability; the absence of clarity, the unpredictable and the unforeseeable.

Serving as a screening to the three processes of law making, law finding and law applying, and keeping present the advantages of law compared to other social mechanisms, we deduce the following:

- Law is not always the known or the partially known. Law is made by humans; the lawmakers, prone to errors when making the law due to the difficulty in knowing how things may turn out to be in the future. Furthermore, given the limits and boundaries of the human mental capacities and being irrational agents, as mentioned in Chapter I, what may seem the best now, cannot be the best in the future;
- Law is often the partially known because of the difficulties and technicalities of the language and the procedures or flood or inflation of rules or acts. It is difficult even for the law expert to make clarity and certainty in the legal pluralism. Tamanaha maintains that this has always been the situation with the law.[279] Yet, the intensification of the globalization and people movement and interaction across borders, and the *sui generis* presence of the European Union, are met with the fragmentation of law and multiple restrictions;

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[276] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 547.

[277] Kruger, Thalia (2014): Legal certainty in international civil cases. Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.

[278] Steele, J.; Gardner, J. (2004): *Risks and Legal Theory*. Oxford and Portland Oregon: Hart Publishing, pp. 120-121.

[279] Tamanaha, Brian Z. (2007): Understanding Legal Pluralism: Past to Present, Local to Global. In *Sydney Law Review* Vol. 29, pp. 375–411. Available online at http://ssrn.com/abstract=1010105.

- The legal landscape is 'composed' of multiple centers, so the centrality, which makes certainty, is jeopardized. Colonization of life, where law has evolved into a monster, is a reality. Proliferation of laws and structures, which overlap in roles, duties, and responsibilities, bring confusions of the similarities. More does not mean better or more certainty. As we have seen, the higher the number, the higher the ambiguity. Following the law is not an easy task. More laws and structures do not mean more trust. It might be just like Publius Tacitus used to say *'the more corrupt the state, the more numerous the laws'*.

Another problem with legal certainty is the restriction on the personal autonomy and the right to private life. Law's interference or intervention should have its limits but it is not easy.[280] The institutions are interfering and the weigh is becoming hardly bearable. Conley argues for a mild form of paternalism of the law and restriction of autonomy, based on the irrationality of human beings. Mass surveillance is the best example to indicate the problem nowadays. It is just as Weber feared that 'the spread of bureaucracy would imprison individuals in a 'steel-hard cage' from which there would be little chance of escape'.[281]

With regard to law being the knowledgeable authority, there is lack of proper cooperation between theory findings and practice and between different disciplines. The legal discipline in Germany is very protective to its own system, though it is more and more opening up to the social disciplines. Judges are not always the rational and impartial agents we thought and expect them to be.[282] Procedures are not always followed and at times procedure is used as a justification to close sensitive cases, which have political implications.[283]

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[280] It is interesting to see the evolution of the relationship between law and politics in the work of Duncan Kennedy on the globalization of legal thought.
[281] Giddens, Anthony; Sutton, Philip W. (2013): *Sociology*. 7th ed. Cambridge: Polity, p. 17.
[282] This is one of the reasons Aquinas and Hobbes thought the rule of law was impossible.
[283] Two highly sensitive political cases in Albania, where a former minister of defense and a minister of transport, now the chief of the main opposition party, have been involved, have been closed on procedural claims by the Office of the General Prosecutor.

Judges discretion or caprice of judges[284] has been a topic for long discussions. Germany is very careful in leaving much room for judge's discretion or judge-made law.[285] The judges' roles should gain more weight when making law but limited when making judicial decisions. As with regard to international judges, according to Professor Jürgen Basedow,[286] they act more like ambassadors of their countries transferring their national model to the international courts, as they are politically appointed. Making a comparison between judges of the Strasbourg Court and the Luxembourg Court, he pointed out, the latters are more vulnerable because of the possibility of renewing the terms.

Law may lead to ambiguity because of the language used and a high number of references. Law's language should not only be clear; it should be understandable. Understanding the legal language is not an easy task, even for the lawyers, mainly due to the technicalities, and, as mentioned in chapter I, because law is a message containing a meaning in a given context. Empirical research has shown that law as programme, such as conventions and treaties, especially at the global level, have failed to provide legal certainty.[287] Barriers to certainty of law derive also from people's education and mental programs in understanding law.

A very crucial aspect of legal certainty is law accessibility and this, in simple terms, is translated into monetary terms and involves the level of trust at the justice system, be it administrative justice or court justice. Both money and time, especially the perception of not having or loosing them, is a negative anticipation and expectation, which make people in discomfort, limbo, or reluctance of taking action. Money, especially, is a great source of concern, because it cognitively relates to loss, especially of the weaker parties.

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[284] Kruger, Thalia (2014): *Legal certainty in international civil cases*. Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.

[285] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607.

[286] A lecture delivered by Lord Mance at Max Planck Institute in Hamburg in the occasion of Reimer Lüst Lecture. 01.07.2013. The full lecture is to be found in Mance, Jonathan (2014): In a manner of speaking: how do common, civil and European law compare? In *Rabels Zeitschrift für ausländisches und internationals Privatrecht* 78, pp. 231–251.

[287] Gessner, Volkmar (1998): *Globalization and legal certainty*. In Volkmar Gessner, Ali Cem Budak (Eds.): Emerging legal certainty: empirical studies on the globalization of law. Dartmouth: Ahgate Publishing Limited, pp. 427–447, p. 434.

Law, providing for schemas, sends people on the automatic thinking mode, not questioning many things and even conforming. On the other side ignoratia *juris non excusat or ignorantia legis neminem excusat,* law does not excuse someone from not knowing the law.

Barriers do derive also from the cultural perceptions of differences. The cases have been elaborated in chapter I. Yet, the perception that one is in a foreign country is associated with 'fears' of breaking the law without even knowing it.

International law presents its barriers for the achievement of legal certainty. The nationalization of law in the 19th century brought uncertainty.[288] Follow is a fragment from the analysis made by Jenny Steele[289] on international law, highlighting the high role that power and politics have in influencing international law, which in turn make it a source of uncertainty, among others:

'...the proliferation of uncoordinated tribunals, and the disaggregation of international law along subject-specific lines – the result of the law being created piecemeal through treaties with a particular focus, and of the fact that transnational commercial law is substantially created by private contracting parties – generates problems with consistency and coherence, ... detracting from equality of application and certainty. It is not possible to keep up with all the new treaties, decisions of international organizations, and cases of international courts and tribunals. Particular complications for consistency are presented in overlapping areas between separate treaty regimes, as when environmental issues have implications for trade.

...the process of international law application is not always transparent.

...problems of clarity, coherence, and consistency of application are created by the fact that national legal regimes and their domestic courts interact in a multitude of planned and unplanned ways with public and private international law.
...the primary orientation of international law – by design – has been to keep peace between sovereign nations, a goal which often is advanced more by compromise than by strict rule-orientation.'

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[288] Kruger, Thalia (2014): *Legal certainty in international civil cases.* Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.
[289] Steele, Jenny (2004): *Risks and legal theory.* Oxford: Hart, p. 132.

There are different aspects of private international law that bring uncertainty, though the foreign law is applied for different reasons, the main one being reciprocity or comity. The principle of *renvoi* is useless for legal certainty.[290] It represents a chain of references, which bring cases back and forth and this is a pure source of uncertainty. It is often an issue whether *renvoi* sends back to the procedure, the substance, or both of them. So do different concurring connecting factors. PIL making certainty is also undermined by non-uniformity in categorizing law.[291] Recognition and enforcement of foreign judgments is very important for the achievement of legal certainty.[292]

II. 4. 2   Barriers to Legal Certainty in Albania

Some of the problems concerning the Albanian political and legal system have been highlighted in the sections above.

The main problem in the country is *who makes the law*, which *par excellence* defines *how* laws are made. Who makes the law and how it is made, in theory, is very similar to the German process. Yet, Albania is a highly politicized country.[293] Luhmann spoke of the '*structural couplings'* between different sub-systems in a country and the importance of the differentiation of these sub-systems and their communication, in order to function properly and achieve the objectives for which they came into existence. This is highly connected to the division of powers in a country. In Albania it is difficult to see them apart or balancing each other.

The Albanian constitution has been amended 5 times since its entry into force in 1998. The last amendments that were made in the framework of justice reform, in July 2016, were preceded by high political controversies. The debate culminated in intensive diplomatic intervention for the approval of the amendments in July 2016. Political developments of the

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[290] Kruger, Thalia (2014): *Legal certainty in international civil cases*. Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.

[291] The topics concerning PIL and legal certainty will be discussed into more details in Chapter III.

[292] Kruger, Thalia (2014): *Legal certainty in international civil cases*. Private International Law. Hague Academy of International Law. The Hague, 7/28/2014 - 8/1/2014. https://www.hagueacademy.nl/wp-content/uploads/2015/03/2014.pdf.

[293] Politics is the art of uncertainty and in Albania, the recent developments in the political arena and the party coalitions, best exemplify it. Yet, political uncertainty is not only an Albanian feature. https://www.nytimes.com/2017/06/10/world/europe/theresa-may-election-politics-populism-interpreter.html?_r=0

first half of 2017, where the main opposition party boycotted the parliament and entered a 3-month strike in front of the Prime Minister's building, led to breaches of the Constitution with the change of the date of general elections of 2017 already set by a presidential decree and the registration of political parties in the Central Elections Commission well behind the deadline.[294] The international community was involved in offering a solution, and the solution accepted by all parties, national and international, was political, and question marks pends on the legality of the actions, despite many justifications done in the name of the justice reform. Statements from the European Commission, to a certain extent contradictory, accompanied the developments.[295]

Members of the parliament are not properly educated; especially referring to legal education, and several times the local media has alluded to MPs buying the diplomas. No official verifications have ever been made. A law on the decriminalization for the members of the parliament and public officials has been approved in December 2015, after heated political debate and postponement. Besides rumors in the media, not much has been done under the umbrella of this law. The public administration, which is first responsible for preparing the draft legal acts, suffers from frequent turnovers and an expert administration is far from the expected standards.

The politics and the privileges of the political class and the non-application of distributive and restoring fairness and justice, is best indicated in the law enforcement when political figures are involved. Long story short, no politician has ever been undergoing a legal process, despite media investigation and general opinion. It seems like the political class has created a mini-society or parallel society which takes much more benefits while gives much less contribution. Using Orwell's words, "all animals are equal, but some animals are more equal than others".[296] There is an opinion that political classes of different countries and

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[294] The quantity of writings regarding the developments of this period in the Albanian daily news media is immense.

[295] https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/statement-commissioner-hahn-citizens-albania_en;
https://eeas.europa.eu/headquarters/headquarters-homepage_en/26509/%20Statement%20by%20Federica%20Mogherini%20and%20Johannes%20Hahn%20on%20the%20agreement%20reached%20by%20political%20parties%20in%20Albania

[296] Orwell, George., *Animal farm*, 1945. In legal philosophy we often encounter thinking of philosophers, which treat human beings as two different categories, those who rule and those are ruled, slaves and (people) owners, leaving the impression that we have two kinds of people in the world. And this thinking has been misused for political purposes. Since we do not know whether there is a supranatural power or someone or something above

international organization sustain and support each other in the application of geo-strategies, despite the nature of the regime and the level of corruption. The behavior of the international community with the Albanian political class, from 1990, best demonstrates this claim.

The number of acts legislated is high and adding to the problem of legal pluralism. 275 official gazettes have been published for 2016, for a total of 27823 pages. The numbers for 2017[297] are 127 official gazettes for a total of 6467 pages. Laws get a lot of amendments and this can easily be deduced from a careful observation of the official legal publishing website. This is somehow understandable for a country that changed into a pluralistic society aiming at embracing the principles of liberalism and free market. Of 91 laws adopted for 2017, 31 are amendments; whereas of 353 Decisions of the Council of Ministers, 108 are amendments to previous decisions.[298]

In Albania, *who finds and applies the law* is the other side of the same problematic coin. The judicial system is highly dependent on the political class because they are nominated, appointed, or elected by them.

The justice systems reform[299] is highly undermined by the political class. The reform has started 3 years ago and it is still in the initial phase of appointing the people who will make the vetting of the judges and prosecutors. It is not clear who is more of a barrier to the reform, the politicians or the judges and the prosecutors. Only recently has the union of judges filed a second claim to the Constitutional Court asking for the declaration as unconstitutional of some provisions of the so-called Vetting Law.

The rule of law is highly challenged and the situation is more to be described as a 'law of man' situation. The consequences of high politicization of a community life is that the mind unconsciously think of finding the right persons not the right laws, and the whole system paralyzes because of the perception that law is not accessible. Only when connections are strong or the law is strong people do take action. This is linked to the perception of not

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us or scientific knowledge supporting the superiority of one class of human beings over the other, no one can be deified or divinized among humans.
[297] As at mid-June 2017
[298] Data from the Official Center of Legal Publications, www.qbz.gov.al
[299] More information on the reform in Albanian is to be found at http://reformanedrejtesi.al. For an English version see http://www.euralius.eu/index.php/en/library/justice-reform.

having control over our life or actions and feeling powerless, as described in the findings of Hofstede in high uncertainty avoidance countries, like Albania is.

II. 4. 3   European Union and the European Integration Process

European Union is a unique project. Its benefits are shown in numberless occasions and aspects. Yet, the EU is a source of ambiguity for many: inside and outside the Community. It is a source of uncertainty, because the project itself does not have a final objective. The enlargement prospective is unclear. There is a paradox in the freedom of movement twinned with multiple restrictions. The legal landscape is also getting chaotic with many regulations and other legal acts and the co-existence with the national legislations. Given that it is a political process, actions are undertaken finding the tiny currents where there is free non-contentious space and equality between states and impartiality is not always the case.

The Union is set to the establishment of a common area of justice, security, and freedom, but it is challenged by internal and external migration waves, and based on the premises of Hofstede's theory, the European Union countries, being more on the high uncertainty avoidance camp, deploy considerably high levels of xenophobia and nationalism.

With regards to EU relations with Albania, apart from the fact that there is no clear prospective on the enlargement for all aspiring countries, apart from the commitment on both sides, it is difficult to understand where EU stands in terms of priorities compared to other political commitments and obligations, as most of the time things seem optional rather than obligatory. The language of the annual progress reports is somehow vague and confined to be politically correct, and display the image of a concern more of the big picture and the outside image. Furthermore, a few people really understand (the role of) the Stabilization and Association Agreement, entered into force in 2009, and the fact that the Stabilization and Association Council serves as a judicial body for cases falling under the Agreement, including the author of this thesis.

As seen, law, as it stands, does not qualify much for an instrument, which reduces uncertainty. It has not succeeded in falling out from the paradox of creating more of what we want to avoid in the road to avoid it. Just like with risk, as explained in Chapter I and with

overspecialization brought forward at the methodology section. It has become complicated even for the law experts, let alone the law person. Does it preserve our state of mental or psychological wellbeing, or even more, is it the source of this wellbeing? Does law, as it stands today, ensure relatively stable predictions and eudemonia and ataraxia?

What should law or the lawmakers do?

Somewhere on Internet I read a script on the wall: 'police everywhere, justice nowhere'. Or wherever I see policeman I feel fear, I do not feel protected. Part of the solution lays in the problems themselves. This certainly is not a good image of the law and a 'picture' or 'piece of music' in cacophony and disharmony.

* Law: the King-Philosopher

The term was coined by Plato. As Hannah Arendt greatly describes it in one of her great works about authority,[300] Plato, in antiquity, sought to narrow the gap between the two and the triumph of the rule of reason: an authority with knowledge that commands confidence and does not make use of violence. An authority with more than persuasive attributes. It certainly faces a lot of challenges, mainly because of the dichotomy between law on paper and law in action, and this is best found in the Kant's answer to Plato: 'It is not to be expected that kings philosophize or that philosophers become kings, nor is it to be desired, because the possession of power corrupts the free judgment of reason inevitably'.[301] This is explained into more details in the following chapter, with the German model being pretty much closer to this idea (l).

I have already explained before the possibility of law to be the knowledgeable authority, which means, more or less, the king-philosopher.

* Law Reaching Us Out

Law should incline towards natural human inclinations. It should follow the protective and defensive model of the psychological homeostasis and its protecting and regulating

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[300] Arendt, Hannah (1961): *Between past and future*. Penguin Classics, Revised edition (September 26, 2006).
[301] , Ibid., p. 107.

mechanisms. Just like the hemostatic mechanisms, law should determine and create/adjust receptors, the control center and the effectors.

Law should be protecting and regulating mechanisms inside the social system, otherwise it is and becomes pointless and irrelevant. It should protect the essence, i.e. the need for certainty. Furthermore, lawmakers should bridge the gap between natural and positive law. In this regard, having in mind the internal and almost unconscious way of making certainty out of the world:

- Law should help our automatic thinking, our schemas and judgment heuristics.
- Law should be the accessible schemas.
- Law should create trustful heuristics. People should arrive immediately at the competence or the intentions of law with every action of it.
- Law should be emotions and arrive at our emotions. Is it punishing or is it rewarding? Law should not be perceived as punishment. The counter-attitudinal and rewards of laws should not be extreme. Law should be educational because as such, law is seen as positive reward and as something, which heals rather than punishes and prohibits. Since dissonance is pain to our brain, law should reduce dissonance and harmonize inputs sent to our brain. We have seen at the dissonance cognition theory, that when we experience and cannot find external justification or the reward is small, we turn to ourselves and change internally.
- Law should prime people and 'smell' as 'clean' and 'competent'.

The importance of the principles and of the principle of legal certainty

I strongly believe that the work should first and foremost start from the *principles*. Just like with the universe, the world and the process of homeostasis, there should be some guiding and organizing principles, which should guide and be the check-list of all law-making and law in action. I strongly root for the constitutional principle of legal certainty and this will be explained into more details in the next chapter.

Law taking a holistic approach and tending to harmonization in itself and cooperation with other disciplines

This will also be detailed in the chapter on law's harmonization. Yet, it is relevant to mention that internal harmonization is a great service to the image of the law.

Law's role(s) and expectations from it should be clear

What is also very import, is law's communication with its audience. As seen in the work of Aronson and its colleagues on social psychology, the best form of communication, to reach for the desired change, is persuasive communication,[302] which aim at changing attitudes or mental programmes of the individuals and groups, especially the one based on the Yale Attitude Change approach, but more personalized and tailor-made to this work.

Yale Attitude Change approach is the study of the conditions under which people are most likely to change their attitudes. In essence the study endeavors to respond to the answer: *Who says what to whom*?

In our case, the analysis should be more or less as follows:

- Who - Law as authority – who makes the law and how it is made.
- What – the message – the form of the message and its language. Law should be credible and evoke trust.
- We know whom/the audience is – the adult community. Yet, we have to see at what should the law point at exactly so that people adopt positive attitude towards law and its action.
- How is it communicated? Especially the non-verbal communication part – the accurate encoding and decoding of the messages.

This is all tackled into accurate details in the following chapters. What is important to pre-emphasize here is that:

- law should simplify its language and become more friendly to the audiences; and

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[302] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 205.

- law and law actors should education of the audience to be 'savvy risky'.[303] They should be educated on statistical and methodological principles.[304]

[303] https://www.youtube.com/watch?v=KnRWVmWQG24

[304] Aronson, Elliot; Akert, Robin M.; Wilson, Timothy D. (2014): *Social psychology*. 8. ed., new internat. ed. Harlow: Pearson, p. 79.

CHAPTER III   LAW'S OPTIMAL MODEL FOR CERTAINTY IN PRIVATE RELATIONS IN A GLOBALIZING WORLD AND THE EUROPEAN INTEGRATION PROCESS

III. 1 Introduction

Chapter I analyzed the need to reduce or avoid uncertainty and the traditional social mechanisms to address it. From the analysis we saw that certainty is:

- Clarity of language, terms, rules to follow, and results to expect;
- Flow of action in defined patterns;
- Continuity;
- Concentration or centralization;
- Stability;
- Priority and prevalence;
- Conformity;
- The similar;
- Repetition;
- The assurance that one will not be penalized for acting in good faith;
- Justice sought after.

Chapter II analyzed why law remains the best social mechanism to address uncertainty through evidencing how it achieves the abovementioned characteristics and its advantages in comparison to other social mechanisms.

Chapter III concentrates on how law should establish and maintain a state of legal certainty and a leading position in the realm of social mechanisms that address the pressing need for certainty in the face of today's challenges. In concrete terms:

a. Legal certainty should be upgraded at an explicit constitutional status (locally and globally) and be the guiding principle for constitutional review and change;

b. Legal certainty should be the guiding and check-up principle of all of the three law 'moments' of action: law making, law finding, and law applying, ensured at a due process of lawmaking, with the end in mind, supported by a judicial review ex-ante;

c. Legal certainty should be a formal state of law to be achieved (target) through the observance of the principle of legal certainty;

d. Harmonization of procedures, of legal scholarship, and legal education, are the best instruments to achieve the state of legal certainty.

Law should be an effective communication model, think and approach globally but act locally, complemented by an effective education programme build in the process of harmonizing legal scholarship and legal education. And what is most important, by adopting all these, law will be able to build a common legal consciousness[305] and home for everyone wherever s/he goes or little models of home everywhere, with a feeling to belong, in times of accelerated human processes.

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[305] Boele-Woelki, Katharina (2014): *Why and how to accommodate an optional European family law.* In Normann Witzleb, Reinhard Ellger, Peter Mankowski, Hanno Merkt, Oliver Remien (Eds.): Festschrift für Dieter Martiny zum 70. Geburtstag. Tubingen: Mohr Siebeck, pp. 27–40, p. 32.

III. 2   Constitutionalization of the Principle of Legal Certainty

Legal certainty should be upgraded at the constitutional level and guide the constitution making and changing procedure because:

a. Certainty is very important for people's wellbeing and legal certainty is the mechanism by which law enables its contribution to address social uncertainty;

b. All legal principles lead to the achievement of the state of legal certainty; and

c. Legal certainty is the formal state necessary for the achievement of justice.

We saw in chapter I the importance of the principle of legal certainty, as a guiding principle to lead to the reduction or avoidance of social uncertainty. We also saw that, even though not explicitly mentioned in the German constitution, legal certainty is a pervasive principle of the German Grundgesetz and constituent part of the principle of rule of law or *Rechtsstat*. Spain has incorporated the principle of legal certainty in its constitution.[306] Most or all the major European legal systems have the principle of legal certainty[307] incorporated in their legislations. In Albania, the legal certainty principle is also to be derived from different constitutional provisions. Yet, should legal certainty acquire the status of an explicit and exclusive constitutional principle in European and even beyond?

I firmly believe legal certainty should receive the status of an explicit constitutional principle. It should also be the guiding principle in the making of constitutional certainty, through a careful balancing of powers and the process of changing and reviewing the constitution. Constitutional certainty is the basis for institutional certainty and certainty from the state action[308] because it sets roles and statuses and relationships. It creates the constitutional order above all other legal orders. The constitution is the source of all legal sources and the legality of all laws is ensured at this level. Furthermore, taking a careful look at all the constitutional principles in general, we can notice but how they are all about making legal certainty: complementary or serving the cause of making legal certainty or leading to certainty. All

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[306] Article 9.3 of the Spanish Constitution stipulates: "La Constitución garantiza el principio de legalidad, la jerarquía normativa, la publicidad de las normas, la irretroactividad de las disposiciones sancionadoras no favorables o restrictivas de derechos individuales, **la seguridad jurídica**, la responsabilidad y la interdicción de la arbitrariedad de los poderes públicos. (http://www.lamoncloa.gob.es/documents/constitucion_es1.pdf)

[307] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 545.

[308] Constitutional certainty is highly important for the trust of citizens in the justice system.

these domains lead to the achievement of legal certainty on the side of the lawmaker as well as for the citizen or the end-users. If we take some of the legal principles, constitutional or procedural, such as constitutionalism, legality, equality before the law, etc., we can deduce that they contribute to the cause of legal or law certainty, because they contribute to order and flow of action. If we take the German[309] or the US Constitution,[310] we can also deduce the same. Also taking a closer look at the general principles of EU law as recognized by some of the treaties and the case law of the Court of Justice of the EU, we can but realize how they all lead to the principle of legal certainty. Proportionality, equality before the law and non-discrimination, are all procedural principles, which do make certainty in and from the law. Legal principles provide direction and a justification for answers, and within the EU legal order they are placed on the same plane with the constitutional treaties.[311] Legal certainty should be a legal principle incorporated in the EU treaties.

Upgrading legal certainty as an explicit constitutional principle sets limits to the political action, which is prone to power abuse.[312] Legal certainty should be the guiding principle when making constitutions and constitutional changes, and when delegating powers and functions to the institutions and when trying to apply the check and balance principle, which in turn contributes to the constitutional and legal certainty. It is the certainty of the constitutional procedures. Legal certainty should be the constitutional state achieved through these procedures. The making and changing of the constitutions should not be an easy and solely political exercise.[313]

We certainly are cognizant of the rule of law principle, as a constitutional principle or as an aspiration at the constitutional level. The concept is dealt with and wrote about by many, though not much agreement about a definition of it has been achieved (we are used to this peculiarity of the concepts by now). We can think of several of them, but more specifically of

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[309] Foster, Nigel; Sule, Satish (2010): German legal system and laws. 4th ed. Oxford: Oxford University Press, p. 168.
[310] https://www.billofrightsinstitute.org/founding-documents/exploring-constitutional-principles/
[311] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 549.
[312] As Lord Acton is learned to have said "Power tends to corrupt, and absolute power corrupts absolutely'.
[313] The Albanian Constitution has changed 5 times since its entry into force in 1998 (the last time was in July 2016 for the reform of the justice system), whereas the German Basic Law has changed approximately 55 times since its enactment in 1949, including changes during and after the unification of Germany. In a talk delivered on the 60th anniversary of German basic law, Donald Kommers, Professor of Law at the University of Notre Dame Law School in Indiana, USA and the author of the leading English textbook on the constitutional law of the Federal Republic, stated that Germans are not treating their Basic Law as Sacred Scripture and (Source: http://news.nd.edu/news/human-dignity-and-freedom-rights/).

Lon Fuller, H.L.A. Hart, Tom Bingham, and Robert S. Summers. Lord Bingham enlisted 8 domains, which are crucial for the existence of the pre-requisite of formal rule of law. Summers[314] prepared an exhaustive list of 18 principles of the rule of law, naming them principles of second order, just like H.L.A. Hart who spoke of primary and secondary legal rules, the latter being procedural methods about preparing, enacting and applying first order rules. Fuller brought a model of 8 principles for making a law that is procedurally moral.

All these authors speak interchangeably about procedure and the rule of law, but rule of law is also thought of as the substantive rule of law or the social, political and economic goals it pursues. The formal 'rule of law' is made of the legal principles that direct and limit the making and application of the substantive law. Formal rule of law is greater in consensus as to its meaning.[315]

In my judgment, rule of law is the spirit of law, whereas legal certainty is the procedure whose action and achievement produce the spirit of law. Therefore, legal certainty should become the main legal principle at the constitutional level, because of the importance of making certainty and then because all the principles lead to the achievement of legal certainty. Rule of law can be understood as the achievement of the wellbeing at the individual and societal level, the highest value, whereas legal certainty as the instrumental value to achieve the highest intrinsic value, a formal state to be established in order to pave the way or guarantee for the achievement of the substantive part of the rule of law, justice, or vessel which carries the spirit of the rule of law to its destination. Rule of law should be the constitutional aspiration, the positive spirit of positive expectations that law is there and ready to act when needed, the product of the interaction of all the forces of the principles, whereas legal certainty as the main legal principle in the constitution which brings rules and roles together as well as a constituent part of the rule of law. It should be completed by the 'law in action' part played by the public officials and judges. Rule of law can be understood as both formal and substantial state: the former being the state of legal certainty and the second the state of justice. The second state cannot be achieved in a state of uncertainty, i.e. legal certainty is the pre-requisite for the existence of the latter.

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[314] Summers, Robert S. (1999): The principles of the rule of law. In *Cornell Law Faculty Publications* 1206, pp. 1691–1712, pp. 1694-1695. Available online at:
 http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2387&context=facpub.
[315] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 546.

We can think of the rule of law and wellbeing as the highest value of law and human beings respectively. Furthermore, the achievement of the rule of law automatically leads to the achievement of the state of wellbeing at the individual and societal level.

III. 3   Legal Certainty: the Guiding Idea Behind Law's Life

Legal certainty should be the guiding principle behind the processes of law enactment and enforcement and a formal state of law to be achieved with the end in mind. The law should ensure a due process of law making, incorporating argumentative reasoning from the very beginning.

III. 3. 1   The German Model

Behind being a guiding principle and state to be achieved at the constitutional level, legal certainty should be the guiding principle for who is to make law and how; who is to find law and how to apply it, having as an ending premise the private relations.

The German model is, in my judgment, the best model to be followed and incorporated in the legislations, especially of the developing countries and fragile democracies,[316] where law needs to have a strong hold. Maxeiner's model mentioned in Chapter II makes an introduction to the German model of making legal certainty being guided by legal certainty. Legal certainty certainly is crucial for the development of countries with new and fragile democracies like Albania. It may well be argued that it is not very feasible since there are cultural constraints impeding the full realization of this principle in practice. I certainly do agree up to some point, but I do not see it as an insurmountable barrier. People need to get educated to think 'legal certainty' way. The change should come from learning and education processes that are based in law already existing on paper and procedures well defined.

In the *law-making* process, legal certainty is ensured through the statutes, which are the fundamental concept of all law,[317] the central category of legal thinking,[318] and at the heart of legal education.[319] The German legal order is a structure of ought-norms[320] and these

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[316] Whether the term democracy is the correct term to use, this is debatable. Another term has entered the political vocabulary is illiberal democracy used by Indian - American journalist and writer Fareed Zakaria.
[317] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 556.
[318] Ibid.
[319] Ibid.
[320] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 557.

interrelated norms describe conducts, not facts[321] and should be in coherence with each other. Ensuring legal certainty at the law-making phase is a long process and the German legislator has regulated the process through a relatively long and scrupulous process, with different and multiple stakeholders involved, and applying rationality in the law creation: the wording, the content, and the procedures of the drafting.[322] What is of paramount importance is the process prior to drafting the bills, which ensure for the elimination of excessive regulations and futile work of the entire army committed to draft the legislation; and the role of the Federal Ministry of Justice *(Bundesministerium der Justiz),* which is mainly concerned with the drafting of the legislation. The drafting procedure is regulated by the Common Ministerial Rules of Procedure (Gemeinsame Geschaeftsordnung der Bundesministerien) of 2000. The entire process makes itself but certain and the written statutes more.

The essential elements of law, in the formal rule of law format, which the thesis retain to be the components of legal certainty, are:[323] laws validly made and publicly promulgated, of general application, stable, clear in meaning, consistent, and prospective, as Fuller maintains in his Morality of Law.[324]

The *law-finding* process, which implies the interpretation of the statutes and judge-made law, remains a manageable process thanks to the fact that German law keeps minimal federal system conflicts, national codes and systemic legislation, and judicial responsibility for law finding. In the German legal system:

- Law makes clear indication of which law applies;
- Codes are very stable and high efforts are made to keep the consistency among rules;
- Legal publishing, the commentaries, thoughtfully and carefully prepared in order to increase code's clarity and application predictability by brining all possible cases of application;
- Judges, highly educated and specialized, have the responsibility for finding the law (the principle of *iura novit curia*). This avoids relying on the parties or their

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[321] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 557.
[322] Ibid., p. 562.
[323] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 546.
[324] Ibid.

representatives (which are responsible only for bringing the facts in a case or litigation) for making justice.

- Interpretation is a process taken very seriously and made with high responsibility;

In the *law applying* process, i.e. relating the facts to the law or applying law to the facts and preparing and writing the judgments, which are one of the sources for and part of legal education, certainty is made through procedure, ensuring the impartiality of the judgment, also through ensuring that the loosing party understands the decision made and that all the necessary and lawful steps were followed. They have the duty not just to deductively justify the decision, but this justification should be well linked to the specific case.

Law application should be:[325]

- Impartial;
- Provide parties who are sanctioned an opportunity to be heard; and
- Deliver predictable and consistent decisions in individual cases.

III. 3. 2   Suggestions

Departing from this model, the law making, law finding, and application of law should take into account:

III. 3. 2. 1   *At the Lawmaking Level*

(Or: Who is to make law, how is law to be made, and what message should the law deliver.)

Legal certainty should be the constant of law in the changing/liquid world. It should always guide law-making or parliamentary decision-making and administrative decision-making. It should be the *law of the law-making process.*[326] Legal certainty is the most appropriate means to ensure certainty in the legal proliferation and intense cross-cultural communications, because of the order it creates and knowledge and persuasive authority and impartiality. Law certainty should be the guiding principle, because it is the pre-condition for justice, as

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[325] Maxeiner, James R. (2007): Legal certainty: a European alternative to American legal indeterminacy? In *Tulane Journal of International and Comparative Law* 15 (2), pp. 541–607, p. 546.
[326] The term is borrowed from Rose-Ackerman, Susan; Egidy, Stefanie; Fowkes, James (2015): *Due process of law making. The United States, South Africa, Germany, and the European Union.* New York: Cambridge University Press, p. 1.

mentioned in the previous chapter. All European countries, as well as all legal actions at the EU level, should take the German example of making certainty from the law, in order to make legal certainty a prevailing principle of law at the level following the constitution, with some addition suggestions. The Mandelkern Group on Better Regulation Final Report of 2001 recognizes 7 (seven) common principles for the drafting of better regulations, which aims at advising the stakeholders to achieve high quality regulations having the citizens, businesses and public administration as the end-users. This is to be an additional basis for every legislator and regulation-making bodies when drafting regulations or amends existing ones.

III. 3. 2. 1. 1   Who is to make the law?

The main issues at this point remain: *who* is to make law and *how* is law to be made in order to be a *knowledgeable and impartial authority* that ensures optimal certainty? The objective is to show that experts, who employ reasonable argumentation methods, should make law, and interests groups should be involved.

Who is to make law is a landmark issue. It stays at the core of the rule of law principle and the rule of law vs. the rule of man debate. It has long been a dilemma of whether laws should be made by those who will be limited by them. How can one maintain impartiality in the face of human bonded rationality or irrationality? Hobbes and Aquinas maintained that the rule of law is impossible,[327] since man makes laws.

It is in the firm belief of the author of the thesis that law is to be prepared by experts. By experts I refer to legal experts, as well as experts in different areas, depending on the law to be enacted. Experts entail people with the proper education and experience backing up their theoretical or ideological background. Experts are made in the climate of persons free from political, and devoid, ideally, of political inclinations. This means that the public administration is an expert one and not subject to political compromises and frequent turnovers.

Legal experts should make the laws in collaboration with legal scholars and judges. In my firm believe, lawyers and legal theorists should closely and strictly collaborate with each

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[327] Steele, J.; Gardner, J. (2004): *Risks and Legal Theory*. Oxford and Portland Oregon: Hart Publishing, p. 115.

other. This should first and foremost make up for the cognitive and information shortcomings of all parties. They bring theory and practice together, at an expert level. Politics, as Bismarck says, is the art of the possible, meaning that nothing can prevent something from being done, unless objectively impossible. Politicians are the most privileged group of the society and as such, they can make laws as best serving their interests. Legal scholars, being devoid, at least theoretically, of political interests, will most certainly balance this tendency of the politicians, which are the ones who are the only owns endowed with the power to make law. They will most possibly achieve a balance between the desired and the desirable, individual and societal, ensuring, at least in theory, an optimal distribution of needs' providers. One point of discussion here remains the formal lack of legitimacy legal scholars and judges have to make law. I believe this is to be regulated in the legislation on lawmaking procedures.

The lawyers and legal theorists should, on the other hand, closely and strictly collaborate with and take from the social scientists and sciences, especially empirical social sciences such as sociology and psychology. First and foremost, because these two disciplines provide empirical data on human behavior and tendencies, which are crucial to the adaptation of law to the social facts, development, and contemporary demands, and be fuel by knowledge largely, detached to a considerable and objective distance from morals[328]. In this regard, given that psychology rests on empirical facts and finds evidence on values which are the desired and the indicators of and rooted in the very nature of the human being as a social being, law should take well into account and use the findings of psychology as a basis of where to build its normative rules and base the message it creates and delivers in the process of communication.

This is how law becomes and maintains its status of knowledgeable authority. Opening up to and cooperating with empirical social sciences, or, in Luhmann terms, couple with the scientific and empirical subsystem. This is at the heart of the debate whether law should be a closed or an open system. Luhmann is the ardent advocate of the law as a closed system, which should be very careful in accepting external influences or when interacting with its outer environment i.e. the society.[329] I firmly believe that law should remain a semi-closed or

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[328] Thomas Aquinas was the first to speak of the separation between natural and religious values.
[329] Luhmann, Niklas; Ziegert, Klaus A.; Kastner, Fatima (2008): *Law as a social system*. 1st published in pbk. 2008. Oxford, New York: Oxford University Press (Oxford Socio-Legal Studies).

semi-opened system, otherwise it will lose its meaning. It does not make sense for the law to remain a closed and perfectly cohere and working system on the inside, as long as it does not respond to the purpose it has been created for.

The inclusion of the interests groups, vulnerable groups and the citizens is of a paramount importance if law is to be efficient and effective. They are the test that law is going to work out in practice. It is true that this is not an easy process, which requires time, but this time is definitely going to be shorter than the one taken to adjust or correct things. After all, this is a test of maturity for democracy, which holds inclusion as one of its basic tenets.

Albania's public administration unfortunately has suffered from high political turnovers, and sometimes even within the same political specter. This certainty has impeded the establishment of an expert administration able to produce good laws or ensure a professional inclusion of all the parties. In Albania, the law-makers most of the time lack appropriate education and interest groups are mainly the business community or the profit-making mentality type of interests' community. The rest of the population is either inexpert or feeling powerless to have a say in the making of laws or policies. Different initiatives, e.g. of the World Bank, have had the objective to include people as much as possible in the decision-making process, especially at the local level, in the budgeting process as well as participating in the working meetings at the local level. Yet the practice has shown that, everyday problems and the inability to understand the issues being dealt with, have undermined the initiatives. Besides, people perceive a lack of control over the public affairs.

All the parties with a stake in the process, will make possible the employment of a method of law making which ensures greater efficiency and effectiveness: the reasonable argumentation method.[330]

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[330] The main proponents of this theory are Robert Alexy and Luc J. Wintgens.

III. 3. 2. 1. 2   How is law to be made?

They should take into account two main situations: law as a guiding principle for adjusting behavior and decision-making (law *a priori* or before entering private relations and the background against which to take action) and law in litigation cases (law *a fortiori* or civil procedure). These two cases raise different expectations. In the guiding function, law should be clear about what are the rights and the obligations, what is allowed or not, what are the legal consequences of not complying with the rules. In anticipating the litigation process, law should make possible that people positively anticipate that law will be applied (law will take action) and procedural justice with be observed. This means that law should be prepared with the end in mind and enhances the possibility of law being a knowledgeable and impartial authority.

Constitutional review and interpretation is a process highly important for the uniformity of understanding and applying the law within a country. Given that the Constitutional Court, endowed with the duty and obligation to guard the constitution, is a constitution-based body, it stands at the same level with the parliament, the president,[331] and other constitutional organs. Therefore, it is of a paramount importance, as an independent body belonging to no state power and of high expertise, since it is made of judges with legal formation and to a high degree, equaled to legal scholars given that they have to interpret the constitution, statutes, international agreements, and human rights.

Yet, it enters into play *ex-post,[332]* after a law has been enacted and enforced and people have entered into relations. It is of my firm judgment that it should be performed at an ex-ante level, since the ex-post application entails additional time, costs, and more uncertainty for the end-users.

In Albania, always in the process of justice reform, the organic laws and the law for the transitional re-evaluation of judges and prosecutors,[333] have been contested by the union of judges twice[334] before the Constitutional Court. The Court itself, which judges do also have

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[331] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 273.
[332] Foster, Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 275.
[333] Law no. 84/2016, http://www.euralius.eu/en/library/albanian-legislation/category/98-vetting-law
[334] The last one is of the 7th of June 1017

to undergo the vetting process, has asked for an opinion of the Venice Commission.[335] If the constitutional court had been involved from the beginning in the process of reviewing the constitutionality of the laws enacted by the parliament, we would not find ourselves in a situation where the reform is in an infantile age since late October 2014. Although it is foreseen in the rules of procedures for the preparation and enactment of draft-laws that the Ministry of Justice should review all the draft-laws so that they comply with the constitutional provisions, the public officials do not retain the expertise of the constitutional courts judges.

Therefore, constitutional review of the statutes enacted and the law-making process should be applied ex-ante. It assists to the next discussion, where the law making should adopt the method of reasonable argumentation in order to ensure to optimal extent law effectiveness.

Legisprudence is an emerging legal theory, emphasizing the need to study the lawmaking process just like jurisprudence focuses on the law finding (interpretation) and law applying at the court. This is enabled by the inclusion of different actors and the law making and adds to it. Furthermore, given that law making is also, at a certain extent, part of the judges' work (the judge-made law), including them in the law-making process limits the birth of another pole in the legal pluralism, which will make confusion and thus adding to law's uncertainty.

Another issue to be considered at this point is how long does it take for a law to be enacted. The German case (inter-ministerial rules of procedure) has already been mentioned, whereas in Albania, law no. 9000, of 30.1.2003, 'On the organization and functioning of the Council of Ministers',[336] articles 23-26, and the Decision of the Council of Ministers no. 584 of 28.03.2003,[337] 'On the approval of the regulation of the Council of Ministers', provide for the procedures from the preparation to the approval of a draft-act and the complementary documentation.

RIA is a recently adopted and applied method, introduced by the OECD, which aims at assessing *a priori* the impact that an enacted legislation will have on other legislative acts.

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https://www.reporter.al/shoqatat-e-gjyqtareve-padi-te-re-ne-kushtetuese-kunder-reformes-ne-drejtesi/
[335] Venice Commission Opinion No. 868/2016, available online at:
http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)036-e
[336] http://www.zhvillimiurban.gov.al/files/pages_files/15-05-22-12-07-18Ligj_9000_30.01.2003.pdf
[337] http://www.qbz.gov.al/Ligje.pdf/keshilli%20i%20ministrave/vkm%20584.pdf

This is a very good method in theory, but not very easy to apply because of its complexity, the time, and expertise it requires.

III. 3. 2. 1. 3   Law: the Message to the Citizen

This section concentrates on the message law should deliver in order to achieve its effective guiding function. Law is the language as well as the message(s) or meaning (s) it conveys.

- **Law** (the language) should be clear and accessible to everyone

Legal provisions must be sufficiently clear and precise for the citizen to ensure his actions are within the law,[338] with as little as possible internal contradictions and with clear roles and rules to follow. Given that the language, as a system of codified messages will have its expression in the way law in a country is written and interpreted, high attention should be made in keeping this language closer to the common understanding of the making this language. As Montesquieu would rightly point out a long time ago in his '*De l'esprit des loi'*, Book XXIX, 'the laws ought not be subtle. They are designed for people of common understanding, not as an art of logic, but as the plain reason a father of family'. A clear provision demands for words well-chosen and double meanings, uniform terminology, and correct grammatical structure. Law should remain written and with as few references as possible; these references should not be blank or general. Law writing should be guided by the principle of legal clarity.

- **Law** (the message)

Certainty in the law or within the law is a pre-condition for certainty from the law. This is law as a communication programme and communication regulator. As such, law should deliver the following messages, which certainly derive from its content and action:

Law should think global but remain local. Law should address global social uncertainties but act and bee managed locally. Empirical research has shown the weakness of law as programmes beyond the national level. It is difficult for legal certainty to be achieved at the

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[338] Foster, Nigel; Sule, Satish (2010): *German legal system and laws*. 4th ed. Oxford: Oxford University Press, p. 181.

level of global programmes.[339] This is mainly due to the remoteness in accessing the programmes and understanding the technicalities of the language of international law, which stand at the highest level of abstractions. The system of state conventions appeared to be very weak in guiding global legal interaction because of its lacking universality and its being frequently disregarded in legal practice.[340] This is due mainly to the psychological implications it has in understanding and also interpreting[341] the law and as a consequence, establish the right expectations and anticipation. In practice, lawmakers would be unable to draft effective laws, given that law should reflect local peculiarities. What they can do is to make use of transnational or global principles, which are made by people who have a global understanding in multicultural interaction. Another argument for the law to remain local for some time is that the courts handle international law cases as domestic cases, unable to consider foreign elements and uninformed as regards foreign law.[342]

Law should avoid/address the roots of the problems: the social inequalities, by balancing the meeting of needs. Law should be the knowledgeable authority balancing the interests, between the individual and the social, between the egocentric nature of the human beings and the indispensability to live in community and in the distribution of goods for meeting the needs, and is above the parties whenever conflict arises, with no sides.

We want law to go along the laws of the human beings, inherent in our nature. Only then it will be fully effective. And this can be achieved through the psychological considerations of the psychological concepts in the natural law and the modern traits of the latter, such as the ones expressed in the work of Ronald Dworkin, modern natural law scholar, who tries to reconcile the views of the two schools, stating that law is a combination between *social constructed rules* and *moral principles*, which justify the choices we make. This justification is inherent in our being and cannot be constructed but follows internal guidance as to what is good or bad. In the meantime, Hart and Kelsen converge in acknowledging the rule of recognition or the *grundnorm* in claiming the validity of the law or its legitimacy as given.

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[339] Gessner, Volkmar; Budak, Ali Cem (Eds.) (1998): *Emerging legal certainty: empirical studies on the globalization of law*. Dartmouth: Ahgate Publishing Limited, p. 435.
[340] Gessner, Volkmar; Budak, Ali Cem (Eds.) (1998): *Emerging legal certainty: empirical studies on the globalization of law*. Dartmouth: Ahgate Publishing Limited, p. 434.
[341] Applying the sequence of primacy between understanding and interpretation as maintained by Wittgenstein.
[342] This is well the case in Albania and the handling especially of cases falling under the Stabilization and Association Agreement.

We also want law to contribute to the achievement of collective wellbeing, promoting and protecting collective actions that ensure wellbeing and avoid or reduce social uncertainties. Law should endeavor to protect the social values, which are found and defined by psychological and sociological findings, given that legal scholars do not want to equate law with morality. Wellbeing is the desired and the desirable, more the desirable, but it has to find a middle way to reconcile the present with the future.

Law as a knowledgeable authority should recognize human needs and establish equilibrium. Law should not be seen as having a life *per se*, but positioned within the big picture. Law should communicate with the social environment and receive feedback and accept inputs from the social sciences, taking into account developments and protect the essence. Law shall take into consideration the meaning that people seek, not just fear of punishment. Law should be positive if it wants to produce positive results.

Law should protect the values, which are universal. Should law opt for the desired values or the desirable ones? This is a duty that lawmakers have to have well into account when making law. Given that law will always be a byproduct and reflection of political decision-making and historical conditioning, and as long as high percentage of the human actions and behavior is expressed and directed towards the market forces which reflects the selfish interests of the society, law, at least, should be empowered as a programme that balances the individual and social, as several times emphasized during the elaboration of this thesis based on legal philosophical encounters. In order to do so, the law as a programme should foster a social and political dialogue, which speaks communitarianism.

Law should take care of technology and environment, which are the sustainers of the life on earth. As elaborated in Chapter I, environment and technology in interaction have become a dangerous and unpredictable source of uncertainty.

The idea of public law making certainty for private relations raises the question of the division between the public and the private and the discourse on human rights.

When speaking of human values, going back to Chapter I, I like to module them, just like Rokeach,[343] into terminal values and instrumental values, but I would add the middle values. I consider human rights to be the middle value, inherent in human beings, and rule of law principles, or in my understanding the sub-principles of the principle of legal certainty, as instrumental values or artificial/man-made/socially constructed values, playing the role of the transmitter of middle values to the ultimate values. As argued in Chapter I, I consider the continuation of the species and wellbeing as ultimate values, which are, consciously or unconsciously, of high importance to the human beings. All individual motivations lead to aggregate motivations such as these two objectives. The rule of law is the spirit or the motor, which fuels the vessel of human rights towards the ultimate values. Using Hofstede's 3-level of human mental programming (the individual, collective, and universal), I would bring legal certainty and human rights at the universal level. This is what I believe law at the regional and global level should do and this can be achieved through the global constitutionalization of the principle of legal certainty and human rights. And given that certainty is crucial to our wellbeing, legal certainty that makes possible the achievement of optimal certainty should take a primal position.

Human rights are the connection between the public and the private, given their role in the relationship between the individual and the state, as well as individuals with each other. At the end of the day, everything is done for the private life. At the end of the day, we are all human beings and normal citizens, enjoying the amenities of private life but also holding responsibilities for all the challenges. As we will see in the sections to follow, procedural law belongs to the public law domain, but it concerns the actions between private parties. Public authorities sign international conventions but they regard private parties.

A centrist alternative between libertarianism and collectivism or liberalism and conservatism, communitarianism (in the recent moderate format as explained in Will Kymlicka's 'Contemporary political philosophy'), with the motto 'it takes a village to raise a child', endeavors to put a balance between the individual and the collective, recognizing the sacredness of the individual but also affirming the central value of solidarity.[344] This should

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[343] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations.* 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 7.
[344] Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology,* vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 389.

be a main objective of law to be achieved, as it is the pre-condition for motivating people to behave pro-socially, maintaining at the same time a personal agenda which does not go against the greater collective one. This balance will put the desired and desirable values into prospective and contributes to a positive greater project at the international level.

At the *law finding* and the *law applying* process or level, the precondition of legal certainty for anticipating and making justice, is set in the lawmaking process and all the details mentioned in this section. It is worth mentioning here the idea of social accountability or responsibility of the public officials and judges, where they should be held responsible for making damages to the citizens, due to their political protection. This should highly apply in the case of staff turnovers in the public administration. The high price to pay from the taxpayers should not bear on their shoulders. This will be a good exercise for the strengthening of the principle of accountability, another tenet of democracy.

All in all, law should make certainty ex-ante for laypersons and for the law actors in private relations. Law should make certainty for those whom it primarily applies to and who primarily use it: the citizens. Law should make ex-ante certainty for those who work in the first line with the citizens in their private relationships: the notary and the public officials. Law should make certainty for those who have to solve cases and litigations: the lawyers, judges, and arbitrators. Seen from this angle, legal certainty is also important for who defines what is to be harmonized.

III. 4   Harmonization of Procedures regarding Private Legal Relations

Procedure seems to be a key word for the achievement of the state of legal certainty and procedural justice the precursor of substantial justice. Furthermore, the heated debate in Europe about the harmonization and/or unification of the private law centers at different aspects of law to be brought closer with eventual unification. Thus, it is debated about the harmonization of substance, procedure, etc. The thesis maintains that procedure and legal scholarship and education should be at the forefront of the debate and action, because they are the optimal way to achieve optimal legal certainty.

III. 4. 1   Procedure for Legal Certainty

Procedure is scheme and schematic thinking and acting, cemented with passing by of the time. Procedure is the conscious side of law and the positive side of schematic or automatic thinking and heuristics. When changing procedure, the main condition should be that it does not undergo changes so that it becomes unrecognizable.

Procedure is roles and rules about roles, and speaking in Luhmann's language, it is closer to the expectations and easier to be understood by everyone. It is order and less controversial. Procedure is learning by doing. Procedure is ex-ante rules before entering a relationship, in case the relationships ends or is dissolved, and who is doing what, where and when.

There are less psychological barriers to procedure, as it is less prone to (wrongful) interpretation because it is not much subject to meaning and less prey to manipulation. Psychological errors in procedure are less frequent than substantial errors.

Procedure is the 'way', which leads us to justice. Justice is the outcome, but the way to it is through procedural justice, because certainty should be mainly about the process, not the outcome. And this is very important, because both parties in a situation have their own rights and convictions and they both seek for justice. These ways should be paved, clear and known, not leading to or making people feel trapped in labyrinths. Procedure is the guarantee that a certain flow of action will take place in order to search for justice. The form should be

known, but not necessarily it will be the one, as both parties expect justice and maybe both expect the same result. The form of punishment is to be well known in advance.

Procedure is time and money and is the anticipation and expectations that loss will be kept at a minimum. The speed and time to go to the 'source' of justice (i.e. the one who is going to give justice) should be easily identified or identifiable. Tversky and Kahneman speak of risk aversion, whereby people are more inclined not to lose something, even minor in value, than to gain something, even though bigger in value or gain. Procedure can do this.

Procedure best guarantees that the rule of the law prevails, not the rule of people. Procedural law is public law but the best guarantor of certainty in private relations.

III. 4. 2   Harmonization and Unification of Procedure for Legal Certainty

A relatively long debate on the harmonization and unification[345] of private law is going on in Europe, especially the European Union. They are important in the process of European integration because of the four freedoms the Union maintains as its basic tenets and major objectives, i.e. market law, since this is the arena where the loss and gain game is evident and explicit. Yet harmonization and unification have their 'enemies', which oppose the processes with the argument that private law relations are embedded in the cultural aspect of a country.

Harmonization and unification may involve different aspects of law and the legal discipline: harmonization and unification of substantive law, harmonization and unification of procedures and procedural law, harmonization and unification of case-law, harmonization and unification of decision-making, harmonization and unification of legal scholarship, and harmonization and unification of legal education. The list may hypothetically enlarge. Harmonization and unification may occur at a natural pace, on a voluntary/deliberate basis or spontaneous (the bottom up or non-centralist method) or can be imposed deliberately by a higher authority (the top-down or centralist method).

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[345] The processes are not the same, but are on the same way, the main difference being on the instruments and timing for achieving each one of them.

Harmonization of substantive law and the bottom-up approach are the most difficult to achieve, given that there are differences in the categorization or classification of laws. Harmonization of substance means harmonization of rules and this is also at a more abstract level of expectations. Bottom-up approach takes relatively time and yet people will always need guidance and building awareness or as Storme maintains, when the need for harmonization is felt.

- Harmonization and/or unification of procedural law means harmonization and/or unification of the principle of legal certainty incorporated among the principles of procedure of some countries and harmonization and/or unification of the state of legal certainty to be achieved;

- Harmonization and/or unification of procedure and procedural law means harmonization of order through the harmonization of roles, rules about roles, timeframes, and services. It means harmonization of who makes what where and when. It is not much important how things are structured, the form; it is important the role the structures play, even though an eventual unification of the structures would add to the cause of reducing uncertainty. I do not intend creation of transnational structures. In my understanding, this will add to the legal confusion;

- Harmonization and/or unification of procedure means harmonization of authority and expectations and anticipation;

- Harmonization and/or unification of procedure means bottom-up approach with top-down intervention, an optimal combination of the two modes;

- Harmonization and/or unification of procedure means minimization of the discretion and interpretation. Judge-made law constitutes a second authority of law, which brings confusion on what is the flow of action and who is the primary authority which decision is ultimately to be respected. Harmonization and/or unification of procedure will influence the interpretation of the law in different countries; and

- Harmonization of procedures and procedural law means reduction of costs and time, and expectations about loss.

Proponents for the harmonization of procedures, such as Marcel Storme,[346] see procedure as very important in answering three vital questions, or the 'three-headed hydra' of Sir Jack Jacob, related to the psychology of loss or the loss aversion principle of Tversky and Kahneman.

- What will it cost?
- How long it will take to complete?
- What benefit will the plaintiff derive (or what will the defendant be required to pay in the way of compensation)?

These three aspects are very important for the expectations created and the actions to undertake; whether to go for the law or find alternative ways, which most often penalize the weaker party, such as the forum shopping. As Lord Devlin 'where injustice is to be found is not so much in the cases that come to court, but in those that are never brought there. The main field of injustice is not litigation but non-litigation.[347] Furthermore, as Prof. Jürgen Basedow emphasized in the 5th Max Planck PostDoc conference on European Private Law organized in Hamburg from 5-6 May 2014, procedure is very important for the recognition of qualifications for works and services and their movement within the EU.[348]

Procedural law was seen as an area of law specific of a country[349] and fraught with political overtones.[350] But the recent developments have shown that procedural practices of different legal systems are moving towards each other, with EU incorporating both. In my judgment, relying also on the same line of arguments brought forward in this thesis about the commonalities in perceiving and making things, this is an indicator of the real not-so-wide gap between cultures and practices.

The harmonization and unification of procedural law should be achieved initially through the principles of transnational procedure brought forward by legal scholars such as

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[346] Storme, M. (2001): Procedural Law and the Reform of Justice. From Regional to Universal Harmonisation. In *Uniform Law Review - Revue de droit uniforme* 6 (4), pp. 763–777. DOI: 10.1093/ulr/6.4.763.
[347] Ibid., p. 772.
[348] https://www.mpipriv.de/files/pdf4/Programm_aktuell_Postdoc_20141.pdf
[349] Ibid., p Storme, M. (2001): Procedural Law and the Reform of Justice. From Regional to Universal Harmonisation. In *Uniform Law Review - Revue de droit uniforme* 6 (4), pp. 763–777. DOI: 10.1093/ulr/6.4.763, p. 764.
[350] Ibid.

ALI/UNIDROIT and ELI/UNIDROIT[351] projects. Principles are very important because they enshrine what is of value and common to many countries or societies. They evidence the common and are the intermittent values that lead to the achievement of the ultimate values: rule of law and wellbeing. Given that basic values can be conflicting, e.g. freedom vs. equality, or peace vs. justice, law should always enter into play. Yet, the ALI/UNIDROIT principles of transnational civil procedure do not contain legal certainty among them. Principles of civil procedure should be developed at the regional level. Principles should be like the directives in the case of the EU law, which are characterized as harmonizing instruments,[352] leaving to the countries the methods to achieve a harmonized result.

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[351] Available online at:
http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/556972/IPOL_IDA(2017)556972_EN.pdf
[352] Boele-Woelki, Katharina (2010): *Unifying and harmonizing substantive law and the role of conflict of laws*. Leiden, Boston: Martinus Nijhoff Publishers (Pocketbooks of the Hague Academy of International Law), p. 318.

III. 4. 2. 1   *The Role of (EU) Private International Law*

Private international law, which is the coordinating programme for the harmonization of procedures among countries, is considerably important for the harmonization of procedures. Still, PIL is creating its own uncertainties. Be it universal jurisdiction, categorization/qualification or law applicable to a case, or the recognition of foreign judgments, they all imply their sets of legal uncertainties.

At the EU level, without recurring to singular instruments on private international law, it is of importance to mention the use of regulations implementing enhanced cooperation in different matters and the rise of optional instruments,[353] which, in the words of a former British minister of justice, are an Esperanto fallacy.[354] As abovementioned, among the legal acts of the EU, directives are the ones ensuring harmonization, whereas regulations unify. It is quite understandable that the emphasis for the moment should be on directives and the harmonization.

III. 4. 3   **Harmonization of Legal Scholarship and Legal Education**

(Or Building an Effective Knowledge and Information Strategy)

Harmonization of legal education and legal scholarship is very important because we need bottom-up developments in acquiring scientific knowledge and becoming progressively aware of the similarities between cultures, but with top-down acceleration/intervention. It is my firm belief that the dialogue and rapprochement between cultures is achieved by the cooperation of scholars' elites. Elites should take the lead in creating opinions throughout Europe. Karl Deutsch cascade model of opinion formation may best serve as a model, with the intellectual elite taking the lead. This adds to the argument why the legal experts of lawmaking should closely collaborate with legal and social sciences scholars.

The fact that law does not excuse someone on the argument that s/he did not know the law should not just be of burden to the citizen. I have always been wandering how can law claim

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[353] Diane Wallis' lecture on 'Civil justice' at Max Planck Institute in Hamburg on 27/01/2014.
[354] Ibid.

such a thing on the laymen, when the reasons for not knowing the law are innumerous. Furthermore, the fact that the law domain is getting more and more complicated and every day life has become hectic and drowned with information, law is to assume its own responsibilities and not excuse itself with the argumentation that it is there. Therefore, it is of paramount importance for the law and the main law actors to see law as a programme of information and knowledge building. This is the first step. Legal education should be the other main concern. Legal education does not imply solely education in law schools: it implies the legal education of the citizen in all the disciplines and programmes adapted for different groups of the society and legal education interchange. Law should be a middle step between scientific findings, which are not easy to understand for the majority, and the majority, by making scientific finding incorporated in a relatively easy and understandable language for the people.

Law should encourage the bottom-up process of learning, so that things are internalized. And people have to get educated to think as lawyers. On the other hand, lawyers, judges and public officials dealing with legal issues in private relations shall receive psychological education in different manners.

Legal education is law with a purpose. It has been argued throughout the thesis that finding a meaning is important for people, especially adults. Law with a purpose is what makes law effective in the social arena: not only formal rules, which can become a tool in the hands of capricious despots (avoiding main critique to Fuller 8 *sine qua non* of law). Or borrowing Comte's wish, law should become a religion for humanity. Law should be the informational social influence, which results in private acceptance or the bottom-up evolution.

Last but not least, human rights education, but au pair with human responsibilities education, as promoted by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998.[355]

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[355] http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx

III. 4. 4   Harmonization of Procedures and Legal Scholarship and Education

Procedure, in theory and as above explained, creates the idea of home: of the known and the protective. Harmonization of procedures means creating a home or little models of home wherever people find themselves to be, not in discriminating (legal) circumstances. This is what law should really do in practice.

Belonging is the need to form and maintain at least a minimum quantity of interpersonal relationships and feel attached to others, and human beings are fundamentally and pervasively motivated by it.[356] Belonging is thought to have developed in the process of human evolution (the evolution of belonging).[357] The thesis touched upon this topic in Chapter I when discussing the social uncertainties deriving from the need to be together. In the evolution of the consciousness, belonging or being part of a group and live together (gregariousness) is not merely for the physical survival of the individual. Nowadays, the tendency to establish quick social bonds and the reluctance to loose friends, even without benefits, shows the importance of creating bonds, despite the frailty of these bonds.

Maslow claimed a need for love, affection and belongingness, as the third level of human needs, of the absence or hunger for friends and intimate partners and children. He also stated that 'the thwarting of these needs is the most commonly found core in cases of maladjustment and more severe pathology',[358] as supported by many theorists of psychopathology,[359] and that 'any good society must satisfy this need, one way or another, if it is to survive and be healthy'.[360]

His theory of needs was claimed, even by Maslow himself, to be one of theoretical nature rather than embedded in empirical or scientific research. Still, his claims proved to be realistic in light of the new empirical findings.[361]

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[356] Baumeister, Roy F.; Leary, Mark R. (1995): The need to belong. Desire for interpersonal attachments as a fundamental human motivation. In *Psychological Bulletin* 117 (3), pp. 497–529. DOI: 10.1037/0033-2909.117.3.497, p. 522.
[357] Ibid.
[358] Maslow, Abraham H. (1970): *Motivation and personality*. 2nd ed.: Harper and Row, p. 44.
[359] Ibid.
[360] Ibid.
[361] Baumeister, Roy F.; Leary, Mark R. (1995): The need to belong. Desire for interpersonal attachments as a fundamental human motivation. In *Psychological Bulletin* 117 (3), pp. 497–529. DOI: 10.1037/0033-2909.117.3.497522

Belonging is very important for finding meaning in life, as touched upon in the previous sections. It is somewhere where we feel accepted. It has to do with the emotional or subjective part of the experiences, which unconsciously influences our memories and connection to something or someone. Belonging is home: a place we belong to is our home. Maslow spoke of the destructive effects of being without roots or of despising one's roots, one's origin, and one's group; of being a transient or a newcomer rather than a native; of being torn from one's home and family[362]. Through belonging we find our place in the social world (the world we have crated as explained in sociology). Belonging is identity and anchor.

Belonging has a high impact on our wellbeing. Close, supportive, committed relationships boost our chances for physical and subjective wellbeing.[363]

Belonging is one of the pillars of the social concept of meaning in/of life[364]. People in centuries and millenniums have strived to answer to two basic questions: what is our place and what is the meaning of our life on earth. These existentialist questions have received attention in different social constructions and endeavours. This account is joined by the dilemma of what should our purpose in the social life and contribution be, in order to give a sense to our life.[365] Contrary to the majority perceptions and believe, finding a meaning the meaning in/of life is more crucial than the search for happiness. The latter is more immediate

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[362] Maslow, Abraham H. (1970): *Motivation and personality*. 2nd ed.: Harper and Row, p. 43. Even Odysseus longed for his (internal) home. Home is the family and the familiar. It is both a group of people we are part to and a set of feelings that make us feel good. Home is not necessarily a stable place. Home is quality; it is a set of emotions and cognitions from people we feel connected to. The idea of home even in the TV transmissions which try to maintain the same places and same people, especially serials or TV shows with multi-party series.

[363] Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology*, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 388.

[364] It comes down to the things worth doing, which means something worth contributing to. This is very much emphasized in recent work in positive psychology. The other pillars of meaning are: having a purpose and something to contribute in life, feel part of something bigger, and maintain a positive outlook at one's life. The latter is very much linked to the positive self-image we try to maintain in time. For more on belonging and meaning in life see Lambert, Nathaniel M.; Stillman, Tyler F.; Hicks, Joshua A.; Kamble, Shanmukh; Baumeister, Roy F.; Fincham, Frank D. (2013): To Belong Is to Matter. In *Personality and Social Psychology Bulletin* 39 (11), pp. 1418–1427. DOI: 10.1177/0146167213499186.

[365] Contribution should not necessarily be directed to concrete and single persons, but the entire community. Even when directed to concrete or single persons, like in the case of parents toward their children, the purpose should be higher, mire to community. Contribution is better understood through roles, and family roles are very important in this regard. Neither the role we have to play on earth is revealed to us. We have invented our role and contribution. One thing is clear: it cannot be a contribution against nature, as it would have its boomerang effect on us and the environmental problems we face today are a consequence of our damaging role to this ecosystem we belong to. This role and contribution cannot go against our own wellbeing, and in chapter I the thesis partly focused on the risks and hazards brought by our actions to control the environment and put it to our benefit.

and short-term, whereas the previous is a long-term objective, and is crucial at adult stages of life, though we cannot exclude other younger categories. Asked what is that makes life meaningful, most people mentioned satisfying close relationships with family, friends, or romantic partners.[366]

Belonging is also feeling part of something greater than us. We cannot know if God or a supranatural being exists, as Camus would say in his myth of sissify. In the absence of this information, we cannot say there is no meaning to our existence, being purpose and/or belonging. Therefore, in the lack of this ultimate knowledge, we should chose to be useful to our fellow human beings. In the greatest picture, we cannot really know where we are and stand, but we certainly can think that we are part of something or that we must be part of something greater, impossible to our perceptions or understanding. People are orienting themselves more and more towards the spiritual and faith, though somehow different, especially the spiritualistic and religion[367] in the western world.

European Union, as mentioned in Chapter II is a great project for humanity: a home for people inside the Union and a model for future undertakings. It should build a strategy with a social purpose and contribution – create a home and motivate pro-social behavior among individuals, through promoting and protecting private relations in cross-cultural communication and interaction and enabling a sense of belonging and control over proper affairs.[368]

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[366] Berschied, 1985, cited in Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology*, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 377.

[367] From my observations of the social media's reporting. There is a whole industry of books and CD and videos created.

[368] More on the importance of the EU and its role can be found in a recent interview of the newly elected French president in http://www.corriere.it/esteri/17_giugno_21/macron-la-mia-francia-sara-l-inizio-una-rinascita-europea-domani-corriere-l-intervista-integrale-676d7c58-5694-11e7-a35b-7a875278503a.shtml

CHAPTER IV   FAMILY LAW IN EUROPE

IV. 1   Introduction

In Chapter III it was argued on the importance law has in the creation of a sense of home everywhere and for protecting the need to belong and stable affective relationships. Chapter IV upholds the argument that family is a very important mechanism and an umbrella for ensuring certainty and the attributes of home through protecting and meeting the need to belonging, as one of the basic human needs. Law is highly important for the protection of the family as a basic set of social roles and *par excellence* the forum where uncertainty and the main social normative regulator are addressed. In order for this to be achieved, the European countries should allow and opt for the harmonization of family law.

It is not the aim of this chapter to provide for an exhaustive account of family developments in space and time, neither of the changes and challenges undergone. It endeavours to highlight some peculiarities concerning the psychological aspects of family law, in the light of the arguments put forward during the elaboration of the thesis, and bring an argument in favour of the harmonization, with a view to eventual unification, of family law in Europe. There is a pool of experts already in place concerning family law issues who have produced a cornucopia of data and information, so the chapter will only slightly touch upon the work done in order to avoid useless repetition. This chapter's sole intention is to add to the arguments of their cause. There are certainly other areas of law, which do have direct or indirect effects on the family, but this is not the aim of this chapter or thesis.

Law should protect family, as per this function understood, because family is the:

- Nucleus and basic institution of the society and every change affects or afflicts it;
- Basic and main mechanism which optimally addresses uncertainty for the individual; family is home and home is the known, the secure, the protective; family is the *role* level of the expectations, less abstract and better understood;
- Wellbeing, as intrinsic and inherent and ultimate human and social value, maintained through belonging as a middle human value;
- Main motive for people to behave pro-socially. Though the trio of sociologists renowned for their stand on the global society and mentioned in chapter I, described

as pessimist (I would rather call them realists) concentrates on the negative and frail side of the human nature and action, I try to see the positive side of their accounts and the positive aspects of the human psyche, highly a focus of the most recent discipline of psychology, positive and meaning psychology.[369] Having a strong sense of belonging and feeling good and positive, make people perceive wellbeing and be more inclined to behave pro-socially and work for a common general positive purpose.

The culture constraint argument used against the harmonization of family law in Europe, is to be shaken by the counter-argument that family is a very important group of the society, relatively the most stable of all times and with relatively stable roles and rules (by stable I intend the function it maintains), common to all societies, which reduces social and natural uncertainties and ensures the wellbeing, and a common mechanism developed over time by different cultures and societies to ensure both functions.[370] This is why its approach in time should be universal or regional, whereas its application local or regional. The EU should move forward with an agenda on family law harmonization, through directives and support for scholar groups, with a view to eventual or desirable unification through regulations, given that, in my understanding, the latter will remain an objective more than a reality, because things should be managed at the local level in order to be more effective and efficient, and due to some specificities in uncertainty copying mechanisms within the family, result of different paces. EU member states should be more inclined to moving beyond the enhanced cooperation mode of action.

The chapter will concentrate on the following issues:

- Common traits of families as uncertainty copying mechanism – roles and rules;
- The importance of family for belonging, home, and wellbeing;
- Families and social uncertainties – the sources in the globalization and EU integration;

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[369] Positive psychology holds the trademark of Martin Seligman, whereas the psychology of meaning, which can be considered more of a therapy than theory or method of study, holds the signature of Viktor D Frankl and its logotherapy, a contemporary of Freud.
[370] In meaningful conversations I have had with an esteemed fellow researcher from Japan on family and family law, during my research stay at Max Planck Institute in Hamburg, I felt we were speaking of the same country, not two geographically distant countries such as Albania and Japan.

- How should law address social sources of uncertainty in the family;

- The importance of the harmonization of family (procedure) law, during the entering, staying, and leaving phase of the couple, and especially the matrimonial property law;

- Challenges and arguments against harmonization and unification of family law;

- Areas of intervention within the family law less controversial, as a starting point;

- The role of different institutions and mechanisms, such as Private International Law and principles, as guiding before the potential litigation phase; and

- Harmonization of education and legal scholarships, both implying research, as mentioned in Chapter III, because of its importance in understanding the commonalities and divergences.

IV. 2   Family and its All-time Importance for Addressing Uncertainty and Wellbeing

As already emphasized in Chapter II, family is one of the social institutions that have made certainty for people over the course of time, together with educational institutions and the state.[371] Family is the place where certainty is made for our basic needs. Family is the place where our physical and psychological needs are met. Family is the place where the physiological needs for food, security, as maintained in Maslow's hierarchy of needs, are met. Family is the place where the child learns the distinction between safe and dangerous[372] and other categories, which distinguish the good from the evil, the dividing line between the two, and tolerance to each of them.[373] Family is the place where children learn and are educated about roles and rules. Family is the place of role and rules. Family is our safety net and comfort zone. Family is the place where loss and pain will be kept at a minimum. It brings certainty to the place we hold in the world; it defines our status and relation to the world. Family is where the continuation of the human species is ensured.

Family is an amazing social construction and the place where our psychological needs are met. Family is the place where our needs for belonging and love and (self) esteem are met. Family is the one who almost (at least in theory) offers unconditional affection and where it is highly important to feel important and appreciated. Family is the first and foremost place where we belong. Our identity is constructed and shaped within this relatively small social group. We have found meaning through belonging together to this earth. Oxford dictionary defines belonging (to) as 'being part or a member of a club, organization, particular group, type, or system' and 'feel comfortable and happy in a particular situation or with a particular group of people',[374] while in the Albanian dictionary belonging (*përkas*) refers to 'something or someone being integral part of a whole entity'.[375] Belongingness is a basic or fundamental

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[371] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications

[372] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 161.

[373] Ibid., 162.

[374] Hornby, Albert Sydney; Turnbull, Joanna (2011): *Oxford advanced learner's dictionary of current English*. 8. ed., [Nachdr.]. Oxford [u.a.]: Oxford Univ. Press, p. 126.

[375] http://www.fjalori.shkenca.org

human motivation[376] and need – belonging is an instrumental value very important for the achievement of the intrinsic value of wellbeing. It is the desired and the desirable.

Defining family is another definitional challenge nowadays, just like defining law in Chapter III. This because of the changes in the form family has undergone, especially in the last 50 years. I am a pioneer of the meaning of social constructions, structures, institutions, or social phenomena. Focusing on their functions and purpose, which implies the psychological needs/reasons behind their existence, and the role they play (theoretically a positive or useful one), keeps the explanatory account or the theory more stable and relevant in the course of time. This is what I have tried to do with law; this is what I am endeavouring to do with family in this chapter. Given that the functions or purpose of family has been and is to cope with uncertainty or ensure certainties and wellbeing for its member, and the two (certainty and wellbeing), as argued, are closely related,[377] this is what should be recognized as family in space and time: family is a group of 2 or more people, linked by consanguinity or affective ties, which ensure the wellbeing of its members by making certainty of the basic needs. And it is the essence of family making certainty for our needs, especially the psychological needs, that law should protect, taking into account the challenges its functions face, especially in the hectic processes of European integration and globalization.

Sociological theories, which have studied family or families, have had difficulties in maintaining their explanations in time, given that they focused on the outer forms and structures social life takes, including family, whereas the psychological account of the family does not rely on forms but on the essence, which remains relatively stable over time. It might be the case that sociologists and sociologists of law do have to concentrate on the essence of law's existence in order to explain social structures and phenomena in a more sustainable way and understand the dynamics.

Maslow spoke of the need for self-actualization, as the highest of the human needs, which implies finding what is the role and contribution of each one of us in the society. At a first

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[376] Baumeister, Roy F.; Leary, Mark R. (1995): The need to belong. Desire for interpersonal attachments as a fundamental human motivation. In *Psychological Bulletin* 117 (3), pp. 497–529. DOI: 10.1037/0033-2909.117.3.497., p. 498.
[377] European and World Values Surveys have shown the strong negative correlation between satisfaction with home life and uncertainty avoidance, especially in the more affluent countries in Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviors, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 161.

glance, it appears, as this is a need, which does stand in opposition with the need to belong and create stable relations, as pursuing this goal takes time and we need to do this by our own. Someone might also find its calling somewhere far from the people and place it belongs to. Yet, many find that their meaning to life and their contribution is exactly the family.

IV. 3   Sources of (Legal) Uncertainty to Family

Family is a structured net of relationships between different persons. It is the personification of the roles and rules, but with the peculiar distinction of emotions at the peak. Due to the high level of emotional dose one receives within the family and the high level of informality, even though family is one of the structures and institutions making certainty for the individual, it is also a source of uncertainties, pain and loss,[378] plus the uncertainties of the time.[379]

Simone de Beauvoir would greatly capture this moment in her famous phrase 'the false comfort'. Thinking of the past of family and marriage and trying to compare it with the present, a veil of romanticism and idealized fiction always covers it, thinking of a sort of *golden age* in the traditional family. Still, there have always been problems in the families, as pointed out in Stephanie Coontz's work 'The way we never were'.[380] Family is both distressful and pleasant[381]. It is the place of good and evil, where emotions and feelings are displayed in their originality and how they are felt, with no filters. Children in high UA societies develop a stronger superego and not very tolerant to unknown situations.[382]

The concept of family has taken new forms in a time defined as 'unfinished modernity' and 'risk society', where '*even breathing is risky in a polluted world',[383]* the concepts of Ulrich Beck discussed in Chapter I. The family is readapting in form and job-description to the market requirements and the institutionalized individualism that see the single individual as

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[378] A recent case of parental irresponsibility in the USA, available online at:
http://www.repubblica.it/esteri/2017/06/25/news/usa_mamma_chiude_figli_in_auto_per_punizione_muoiono_per_colpo_calore-169066022/

[379] An obvious indicator of the negative emotional aspects of the family is the battles in the courtroom for the divorces or the division of property. As for the latter, when couples fight for property division during divorce, do they fight because they care about the property in itself and do not want to loosing it, even though they are not much aware of what they might be losing or what we will do with what remains with us, or because of pride and revenge or irrationality?

[380] Coontz, Stephanie (1992): *The way we never were. American families and the nostalgia trap:* Basic Books. Yet, the intention has always been to avoid uncertainties, other uncertainties, pertinent to those times. Contribution is seen as the by-product of the meaning of life in the absence of the ultimate knowledge: we should contribute positively to this project called humanity through making possible the respect and fulfilment of the human needs enshrined in the human rights. We should be aware that everything we do has a repercussion in our life sooner or later, so in the big picture we are either all winners or we all lose.

[381] Myers, Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology*, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 378.

[382] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations*. 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 162.

[383] Ulrich Beck's concepts of the second modernity society.

the ideal labour market subject (the single maintains full mobility),[384] and to the conveniences of the world we live in. Beck and Beck-Gernsheim[385] see the present age as one filled with colliding interests between family, work, love, and freedom to pursue individual goals.[386] On the other side, the movements of rights for alternative lifestyle[387] and gender balances have changed the structure and mentality about the structure of the family. Roles have changed and expectations from roles and mental adjustments need time to find their place into the mental schemas. 'Yesterday's spinster is today's single professional woman'.[388] Children rights have become of high priority and prevailing rights within human rights.[389] Law, in turn, faces challenges in adapting and responding to the changes in family, an issue of a highly sensitive nature. Roles and rules within the family have changed. The alternative family is another reality challenging the traditional idea or perception of the family.

Family is the place where uncertainties from the three sources are addressed for every age-cohort, in theory and/or in practice. The first and the second level of needs have been a concern for the human society from the beginning of its time and are mainly addressed, as Maslow maintains in his work.[390] Still, the basic human needs and the perceptions/expectations of their meeting are often concurring and the lower ones usually prevail, not necessarily coinciding with the ones displayed. The 4th and 5th level of needs, respectively the need for self-esteem and the need for self-actualization, psychological in nature and requiring high levels of independence, have gained importance in individuals' agendas and activities.

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[384] Beck, 1992: 116 in Sørensen, Mads P.; Christiansen, Allan (2012): *Ulrich Beck: an introduction to the theory of second modernity and the risk society*. London and New York: Routledge (Routledge Advances in Sociology), p. 42.

[385] The 'masterpiece' of Ulrich Beck and Elisabeth Beck-Gernsheim on adult relationship and matters of love is '*The normal chaos of love'*, Polity Press, 1995.

[386] Giddens, Anthony; Sutton, Philip W. (2013): Sociology. 7th ed. Cambridge: Polity, p. 424.

[387] By 'alternative lifestyle' I refer to the alternative forms of family life, such as co-habitation or registered partnership and the same-sex unions, referred to also as civil unions. As of May 2015, according to Eurostat statistics, 11 EU Member States have legally recognized same-sex marriage.

[388] Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology*, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 385.

[389] Best interest of the child has become a must.

[390] Maslow, in his work on human motivation, maintains that emergency conditions where the basic needs are at threat are rare in normally functioning peaceful societies. All societies not suffering famine and not living under continuous threat of war, has set the conditions and/or institutions to address these issues or prevent states of crisis.

Bendix, relatively long ago, would address his concern about the modern world of Western civilization, where all confront the triple issue of the individual, the nation and the intermediate group:[391] the third unit being non-compatible with the first twos and the three existing in uneasy combination. 'Most of us learn to be parts of different groups without having a full sense of belonging'. Maslow, in 1943, maintained that there is an 'unsatisfied hunger for contact, for intimacy, for belongingness'[392] and a 'need to overcome the widespread feelings of alienation, alones, strangeness, and loneliness, which have ben worsened by our mobility, by the breakdown of traditional groupings, the scattering of families, the generation gap, the steady urbanization …'.[393] All this is not unknown to our generation. Quality in our relationships has been replaced with quantity.[394] Links and connections are created quickly and lost quickly, though we feel sorrow for loosing contacts or when we have to leave a group.[395][396] Attachments can even keep people in abusive relationships; the fear of being alone may seem worse than the pain of emotional or physical abuse.[397]

Close relationships affect health,[398] as they are often fraught with stress, which contributes to heart disease, hypertension, and a suppressed immune system.[399] Multiple links between the need to belong and cognitive processes, emotional patterns, behavioural response, and health and wellbeing are proved by empirical data,[400] as well as it (the need to belong) being a universal thing.[401] Western societies which are more individualistic and where more priority is given to the self and to answer the Rogerian question 'Am I living in a way which is deeply

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[391] Gessner would call these 'third cultures' in Gessner, Volkmar; Budak, Ali Cem (Eds.) (1998): *Emerging legal certainty: empirical studies on the globalization of law*. Dartmouth: Ashgate Publishing Limited.
[392] Maslow, Abraham H. (1970): *Motivation and personality*. 2nd ed.: Harper and Row, p. 44.
[393] Ibid.
[394] Bauman, cited in Giddens, Anthony; Sutton, Philip W. (2013): *Sociology*. 7th ed. Cambridge: Polity, p. 424.
[395] Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology*, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 377.
[396] https://www.psychologytoday.com/blog/feeling-it/201706/the-loneliness-epidemic-and-what-we-can-do-about-it
[397] Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology*, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 377.
[398] Ibid., 379.
[399] Ibid., 378.
[400] Baumeister, Roy F.; Leary, Mark R. (1995): The need to belong. Desire for interpersonal attachments as a fundamental human motivation. In *Psychological Bulletin* 117 (3), pp. 497–529. DOI: 10.1037/0033-2909.117.3.497., p. 522.
[401] Ibid., p. 517.

satisfying to me, and which truly expresses me',[402] experience huge increase in the rates of depression, resulting partly from the meaninglessness that occurs when there is no 'attachment to something larger than the lonely self'.[403]

Law, at the national level, is justified for non-intervening into private relations having high psychological implications,[404] with the argument that state is reluctant to intervene into this kind of relations, which pertain to the personal life's domain. Frances E. Olsen would downplay this argument as the 'incoherence argument', making a comparison with the justifications of non-intervention in the free market.[405] State maintains that intervention in the free market is due to the protection of the weaker party. This is the attack state/law gets also from the feminist (legal) movement, which claims that this is a justification for maintaining the status quo of women within the family and that this attitude helps to the perpetuation of violence within the family. In the private relations within the family, the weaker party is usually the woman. Furthermore Conley,[406] in her book against autonomy and defending state's intervention, maintains that coercive paternalism is a necessary form of state intervention to protect human beings from their psychological barriers and poor decision-making as irrational agents. In this light, we can say that leaving law outside the private intimate or affectionate relationships is not very advisable.

There is an increase in the crude rate of divorces and decrease crude rate of marriages within the EU, and an increase in the registered partnerships or cohabitation and same-sex unions,

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[402] Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): *Well-being. The foundations of hedonic psychology,* vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 376.

[403] Seligman, 1988, cited in Myers, David G. (2003): Close relationships and quality of life. In Daniel Kahneman, Ed Diener, Norbert Schwarz (Eds.): Well-being. The foundations of hedonic psychology, vol. 19. 1st pbk. ed. New York: Russell Sage Foundation, pp. 376–393, p. 384. The famous study of the Harvard University on happiness maintains that 'close relationships, more than money or fame, are what keep people happy throughout their lives', in:
http://news.harvard.edu/gazette/story/2017/04/over-nearly-80-years-harvard-study-has-been-showing-how-to-live-a-healthy-and-happy-life/

[404] I guess this is right up to a certain point, because the psychological side of things, being the internal one, is difficult to prove. We might recall the entire criminal law's structure, which is based on the presumption of innocence, because intention, the main motive for criminal deeds, is unseen to the eye. This is very much in tune with the cultural constraint argument.

[405] Olsen, Frances E. (2006): The myth of state intervention in the family. In Susan B. Boyd, Helen Rhoades (Eds.): *Law and families.* Aldershot, Burlington, VT: Ashgate (The international library of essays in law and society), pp. 3–32.

[406] Conley, Sarah (2012): *Against autonomy: justifying coercive paternalism.* Oxford: Oxford University Press.

though marriage remains a widespread institution.[407] There is an increase in the number of international couples created and family establishment in the EU, due to its four freedoms, which have opened the door for border crossing of all human institutions and phenomena. The growing mobility of Union's citizens is likely to lead to an increase in the formation and dissolution of international families.[408] 16 million out of 122 million married couples in the EU (13%) live in a state other than their state of origin and/or have a different nationality from their spouses.[409] The case law of the EU Member States indicates that crossing borders results in a loss of rights or the creation of financial obligations,[410] i.e. both concerning the idea of loss (uncertainty about what and how much is to be lost).

Home is continually being challenged. Between the need to belong and the need to self-actualization, it is getting harder and harder to find stability. We are living in liquid societies when even love has become liquid.[411] Still people long for belonging and love and this is, as Beck and Beck-Gernsheim maintain that 'marriage and family life remain very important to people. Divorce is more common, but rates of remarriage are high. The birth rate may be declining, but there is a huge demand for fertility treatment. Fewer people chose to get married, but the desire to live with someone as part of a couple holds steady'.[412] We always long for a place called home. This is the essence for the existence of the family which law should take care of, given its ability to move beyond borders and penetrate in people lives. In uncertain and liquid times, carrying home with us or finding a home wherever we go, and this is ensured through the harmonization and unification of law, as law enters everywhere. If not, because we are all human beings and we are made of the same ingredients. We need small models of home wherever we go.

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[407] http://ec.europa.eu/eurostat/statistics-explained/index.php/People_in_the_EU_–_statistics_on_household_and_family_structures

[408] Baarsma, N. A. (2011): *The Europeanisation of international family law*. Hague, Berlin: T.M.C. Asser Press; Springer.

[409] Boele-Woelki, Katharina (2014): *Why and how to accommodate an optional European family law*. In Normann Witzleb, Reinhard Ellger, Peter Mankowski, Hanno Merkt, Oliver Remien (Eds.): Festschrift fur Dieter Martiny zum 70. Geburtstag. Tubingen: Mohr Siebeck, pp. 27–40, p. 33.

[410] Ibid., p. 32. These statistics refer to year 2012.

[411] Bauman, Zygmunt (2007): *Liquid times. Living in an age of uncertainty*. Cambridge, Malden, MA: Polity Press.

[412] Giddens, Anthony; Sutton, Philip W. (2013): *Sociology*. 7th ed. Cambridge: Polity, p. 425. Furthermore, making reference to the Harvard study on happiness, marital satisfaction has a protective effect on people's mental health, in http://news.harvard.edu/gazette/story/2017/04/over-nearly-80-years-harvard-study-has-been-showing-how-to-live-a-healthy-and-happy-life/

This is why law should promote a sense of belonging wherever people go or create a home for everyone everywhere. Law should do this through harmonization: maintain the essence. What is the function and contribution of society that law should protect? As Hofstede maintains, attempts to replace the nuclear family, which is threatened with disintegration, with some other institutions that take account of the fundamental gregariousness of human nature, have not been successful so far.[413] Therefore, family remains a very indispensable unit for the fulfilment of the need for certainty.

Following the analysis made in Chapter III on the disciplines of law which are mostly due to bring legal certainty in Europe, namely private procedures and procedure law in Europe and their harmonization, it is deduced that family procedures and family procedural law are indispensable for bringing certainty in international couples and the harmonization of these two areas most likely will bring certainty to the high number of private family relations, so important for the wellbeing of individuals and societies.

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[413] Hofstede, Geert H. (2001): *Culture's consequences. Comparing values, behaviours, institutions, and organizations across nations.* 2nd ed. Thousand Oaks, Calif.: Sage Publications, p. 211.

IV. 4   Harmonization of Family Law and Education in Europe

Harmonization is the process of bringing closer rules and practices in order to respond more effectively to the models of interaction between people across borders. Facing the challenges family and its functions encounter nowadays, law, at the cross-border level, should have as its main objective harmonizing the rules on and procedures concerning family directly or indirectly. As argued in the previous chapter, harmonization of procedure and procedural law should be the avant-garde in the process of bringing higher certainty to citizens in their private cross-border encounters.

IV. 4. 1   Harmonization of Family Law

When it comes to the question of what kind of harmonization or unification works best for family law at the European level and that we should adopt, I fully agree with the argument that family law should be harmonized in substance (eventually), argued perfectly by Nina Dethloff.[414] I do so because as a Universalist, defining social processes in terms of functionality and highly driven and motivated by addressing uncertainty, and someone sharing the moderated natural law thoughts, families in my view are closer to each other everywhere in functions and concerns, despite some peculiarities in forms and practices. I do favour the harmonization of substance family law also because family law should not be a matter of political concern more than a social concern and because substance will complete the idea of home.

That the harmonization, let alone the unification, of family law in the EU countries, is not that desirable, it is encountered in all the papers and books dealing with family or related issues. Family is retained the most private arena of the social life and international law is reluctant to enter where more it left to the morals of a country.

Family law is a political issue and changes came through political will. Duncan Kennedy calls the neo-formalism phase of the globalization of law as 'politics through law' and as

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[414] Dethloff, Nina (2003): Arguments for the unification and harmonisation of family law in Europe. In Katharina Boele-Woelki (Ed.): *Perspectives for the unification and harmonisation of family law in Europe*. Antwerp, Oxford, New York: Intersentia (European Family law Series, 4), pp. 37–64.

Prof. Boele-Woelki maintains, 'political influence has become the main determinant in the evolution of national family laws'.[415]

As things stand in the political and legal arena in Europe and the perception of people regarding differences in cultures, we need first to harmonize procedure or roles and terms in the area of family law and reduce costs and time in cross-border undertakings and litigations, so that people find it easier to come together and understand the real differences. More on procedure and its harmonization has been said about in Chapter III. This area of law is less prone to debate or disagreements. This will enable people take action and understand the real discrepancies. Harmonization of procedures, as emphasised, is the bottom-up harmonization accelerated by top-down intervention, allowing proper time of understanding and internalising processes.

IV. 4. 2   The Cultural Constraint Argument and Counter-argument

The cultural constraint argument, deriving from the philosophical prospective that law is a mirror of society and every aspect of the law is modelled by the political and economic forces of a society, and the relativism of human values, is the main argument used by sceptics of private law harmonization in Europe, as opposed to proponents and supporters of the harmonization cause, who rely on the universalism of human values and laws of reason. Pierre Legrand, a vivid supporter of the 'mirror' theory, speaks of legal *mentalité*'[416] (a collective mental programme crossed in the work of Hofstede), as the underlying idea behind or below the 'skin' of law in a society, especially family and family law, which is often used as a paradigmatic example of the strong embedment of law in society[417]. Still, this legal *mentalité* is a psychological product and we should not undervalue the impact of the common psychological processes of the human beings everywhere, especially the ones triggered by facing uncertainty, as argued in Chapter I. The problem with legal transplants and law irritants is another sub-argument brought by cultural constraint argument supporters against

[415] Boele-Woelki, Katharina (2014): *Why and how to accommodate an optional European family law.* In Normann Witzleb, Reinhard Ellger, Peter Mankowski, Hanno Merkt, Oliver Remien (Eds.): Festschrift fur Dieter Martiny zum 70. Geburtstag. Tubingen: Mohr Siebeck, pp. 27–40, p. 28.
[416] Antokolskaia, Masha (2006): *Harmonisation of family law in Europe: a historical perspective: a tale of two millennia.* Antwerp, Oxford: Intersentia (European Family law Series, 13), p. 40.
[417] Ibid., p. 38.

law's harmonization in Europe.[418] Again, the legal transplants have a relatively long story behind their existence and therefore bear with them the commonalities of addressing uncertainty.

As above mentioned, non-intervention in family issues is considered, by the (legal) feminist movement, as reinforcing the gender inequality and violence within the family. Law intervention is crucial for the continuation of functionality of the family, given that, as argued during the elaboration of the thesis, law is the optimal source of social certainty. Therefore, also adding up the other arguments, law should commence or continue with the aspects, which eventually lead to brining legislations closer to each other in order to increase the optimality of legal certainty: procedure and procedural law.

IV. 4. 3   Harmonization of Family Procedure and Family Procedural Law in Europe

The existence of different set of rules and institutions, which regulate on family law, at the global and regional level, marks another barrier to the certainty. The co-existence of the Hague Conference on Private International Law and the EU and the Council of Europe within our continent, is another source of barriers in defining the set of rules to turn to for guidance. It is of place to mention the international instruments, which influence the process within Europe. Thus, the UN Covenant on Economic, Social and Culture Rights contains a number of provisions touching upon family issues, directly or indirectly linked.

The harmonization and unification instruments at the European level are as follows:[419]

- Council of Europe conventions mainly in the field of child law;
- European Convention on Human Rights and Fundamental Freedoms contains a number of provisions concerning family, such as Article 8. The Convention in many countries is given a high place in the hierarchy of legal acts. (In Albania, the

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[418] Antokolskaia, Masha (2006): *Harmonisation of family law in Europe: a historical perspective: a tale of two millennia.* Antwerp, Oxford: Intersentia (European Family law Series, 13), p. 38.

[419] Boele-Woelki, Katharina (2014): *Why and how to accommodate an optional European family law*. In Normann Witzleb, Reinhard Ellger, Peter Mankowski, Hanno Merkt, Oliver Remien (Eds.): Festschrift fur Dieter Martiny zum 70. Geburtstag. Tubingen: Mohr Siebeck, pp. 27–40. An inventory of the instruments is also made in the publication of CEFL on the principles of European family law regarding property relations between spouses, pp. 18-23.

Convention is equalised in legal importance and place with the Albanian Constitution with regard to the basic rights);

- The case-law of the ECtHR, which has resulted in the approximation of family law in some areas;

- Scandinavian agreements;

- Franco - German Agreement on the optional matrimonial property regime, which, in my model-analysis results in uncertainty because of the increase in the number of instruments and the necessity to be informed in advance about the existence of this instrument and its peculiarities;

- The Charter of Fundamental Rights of the European Union, in the category of freedoms, enlists respect for private and family life (art. 7) and right to marry and right to found a family (art. 9) among the rights stipulated. This is very positive due to the fact that the charter is part to the body of EU law. It can be conceived as an unifying instrument, although the EU maintains that it cannot ensure;

- EU regulations and directives;

- Brussels and Rome regimes of EU PIL; and

- The set of Principles of European Family Law[420] put forward by the Centre for European Family Law (CEFL),[421] is a great step toward building an understanding, at the intellectual and educational level of the commonalities between different cultures and societies in family matters, though starting from the premise that there are strong differences among family and family law in different European countries. I believe it is in their strong interests to undertake some psychological studies underlying the structures and choices of different societies at different point in time.

As mentioned at the beginning of this chapter, the purpose is not to identify all the existing instruments in place for the harmonization and/or unification of family law, but to highlight the fact that their existence add to the legal pluralism which presents a barrier to the achievement of legal certainty. This adds to the suggestion made in Chapter III that law's application should remain local. The idea of options at the international level is well received as long as it creates the perception that one can opt for the most suitable alternative; yet it casts doubts as to whether the alternatives are well understood, including all the exceptions to

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[420] There are three sets of principles elaborated so far by CEFL: in the field of divorce and maintenance between former spouses, parental responsibility, and propriety relations between spouses.
[421] www.ceflonline.net

the rules, which legal system applies, given that the options to the family law jurisdiction and applicable law should have a clear connecting factor which does always imply exceptions to the rule.

Private international law is claimed to be a plausible area of law, which can bring more legal certainty, given that it is more about procedure. It is important if we think of it from the present point of view[422] and as a harmonization programme of the laws of different countries (or as an inventory to who is doing what in conflict of law's cases). Yet, PIL is more a source of uncertainty. The issues of jurisdiction, applicable law, *renvoi*, forum shopping and the weaker party and the limited options to connecting factor in family law, residence and domicile, property issues which remain highly a national (sovereignty) and political issue, loss of status and vested rights, and the recognition of foreign judgements subject to some restrictions and public order (as mentioned in barriers to legal certainty), do constitute barriers or challenges to the success of PIL in reducing uncertainties in private relations at the cross-border level. As already mentioned in chapter II, the nationalization of PIL is made due to the fact that judges chose to apply their own rules of PIL, because they do not know other legislations and hiring expertise, as Germany may allow itself to do, is expensive and requires more time.

IV. 4. 3. 1   *Matrimonial Property Law*

Marriage is a social institution adults entered out of the necessity to protect property and wealth by disposing it in a pre-decided way and based on interests. Love will come only later as a factor in the decision to get married and as Boswell has noted:[423]

> '*In pre-modern Europe, marriage usually began as a property arrangement,*
> *was in its middle mostly about raising children, and ended about love.*
> *Few couples in fact married 'for love', but many grew to love each other*
> *in time as they jointly managed their household, reared their offspring,*

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[422] As Prof. Boele-Woelki maintains, if substantial law is harmonized/unified, there would be no need for PIL, in Boele-Woelki, Katharina (2014): *Why and how to accommodate an optional European family law*. In Normann Witzleb, Reinhard Ellger, Peter Mankowski, Hanno Merkt, Oliver Remien (Eds.): Festschrift fur Dieter Martiny zum 70. Geburtstag. Tubingen: Mohr Siebeck, pp. 27–40.
[423] Boswell (1995: xxi) in Giddens, Anthony; Sutton, Philip W. (2013): *Sociology*. 7th ed. Cambridge: Polity.

and shared life's experiences.

Nearly all-surviving epitaphs to spouses evince profound affection.

By contrast, in most of the modern West, marriage begins about love,

in its middle is still mostly about raising children (if there are children),

and ends – often – about property, by which point love is absent or a distant memory.'

The last sentence best describes what is that law has to keep well into consideration when dealing with family. The issues to be considered are several; yet the matrimonial property regimes for couples remain the most pragmatic and less controversial, and this where the legislatures should work upon. Matrimonial property is about loss and the idea of loss,[424] as mentioned at several accounts during the elaboration of the thesis, is very central to the anticipation and expectation of negative uncertainty. Loss in this case implies economic loss and economic loss in turn implies an inability to satisfy the needs. Therefore, couples moving across borders should remain with the certainty that their loss of property will be kept at a minimum. This implies that the procedures concerning matrimonial property of couples should be brought closer and the law on procedures should follow the same line of logic and action.

Having more than one regime of matrimonial property may cause confusion, especially if people are not (well) informed about their existence, rights and duties, and especially if the contractual regime, which is mainly an alternative regime to the default legal regime, such as in Albania[425] and Germany.[426] Germany, which is always at avant-garde, has made contractual regime subject to judicial review and information of couples before taking any step into marriage or cohabitation a must. The English law, which is somehow equalised with more uncertainty due to its judge-made-law nature, adds an element to this uncertainty by making prenuptial agreements subject to judges' discretion and non-binding. According the CEFL study on the principles of matrimonial property law, the elements of all national

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[424] In matrimonial property law there is a lot from the 'negative' anticipation to be made by action. By *negative* I intend non-intervention, speaking in human rights terminology.

[425] Albania family legislation recognizes two matrimonial property regimes: the community of property regime, which is the default one, and the contractual regime. In case couples do not have a contractual agreement, the default regime applies automatically.

[426] Germany has three statutory regimes, of which one is the default one. i.e. the participation in acquisition regime. The other regimes are: the separation of propriety and the community of property.

systems surveyed cannot be merged into one single regime, therefore creating more options and more uncertainty, at least in theory, for the couples, which have to make a choice.[427]

Prenuptial agreements are a concept not very new in family encounters. Yet, recently they have gained importance, following the importance the value of private autonomy has gained in private relations. The contract is the clearest agreement to follow as long as the parties are aware in advance of all the implications prior to the legal bond formation, during marriage and in case of dissolution. It is autonomy of will (relatively) and legal certainty. Contract is the ex-ante certainty. It is order and authority.

There are barriers to the achievement of a well functioning of the contractual regimes, due to the fact that with the changes of the motivation why people enter into marriage and create familial bonds, marriage is not considered a contract. Another barrier is the asymmetry in property possessions of the parties entering the contract. PNAs certainty does imply protecting the property (which one might have first) and therefore is applied, at least in theory, to people pertaining only to the wealthy social classes. It is in the interest of all parties to keep this area of harmonization well into the first priorities of the agenda, due to its economical nature, but first of all because a project such as the EU is to be social before anything else. Therefore people will find familiarity in different regimes and a home, which reduces loss.

IV. 4. 4   Harmonization of Legal Research and Legal Education in Europe

Procedure, whereas full harmonization or unification, maybe are not that desirable, but we need to pair every effort of this harmonization with the discourse on the family rights and the harmonization of the legal scholarship and legal education, which should be fuelled by research findings from social and behavioural sciences. Harmonization of procedures is a substantial step towards the creation of home for everyone everywhere, but education is an indispensable filler of the mosaic.

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[427] Boele-Woelki, Katharina (2013): *Principles of European family law regarding property relations between spouses*. With assistance of Frederique Ferrand, Cristina Gonzales Beilfuss, Maarit Jantera-Jareborg, Nigel Lowe, Dieter Martiny, Walter Pintens. Cambridge, Antwerp, Portland: Intersentia (European Family law Series, 33), p. 25.

Harmonization of education and legal scholarships, both implying research, is also of paramount importance in the process of European integration and family law research. Legal education about family law in Europe is not much of a concern. My observations during the period of research at Max Plank Institute in Hamburg indicated that research on private law there is more about business and company law. This is also for the legal education in Germany, where family law is not a top priority. Same holds for the legal education in Albania, and legal practice is concentrated more on the profit-making areas of business and criminal law.

Even Otto Kahn-Freund, a relatively strong supporter of the cultural constraint argument, *acknowledges that* 'in hardly any legal field has have we seen so intensive and so rapid an assimilation of ideas and institutions as in family law'.[428] This, in my understanding, implies that legal research can and has to do a lot in this regard.

Legal education with a purpose and social responsibility – part of a bigger unity, and that law is creating that unity and a home wherever we go, because law has the power to create the home and reduce the perception of the big gap between cultures, by allowing people to come closer to each other. I, myself, travelling, observing, and reading, have found myself close to many cultures and to many scholars writing about human issues.

IV. 4. 5   *Quo vadis* Europe? The EU and a Model - project called 'Humanity'

World is a place we all should belong to and we all should perceive that we have a role in this project. Should we act as a mindfully unity, or employ the top-down approach, or should we leave the auto-poiesis process take place for itself, the bottom-up approach?

The EU is a mini-project for humanity or a regional part. It is a great project for humanity. The EU is a great project with a purpose, which gives people and countries a sense of belonging and contribution. Yet, it is an ambiguous project. It is making itself attractive but fading away. It keeps the doors open but hardly lets you in. Its future is not clear and it is not giving a clear purpose to people directly or indirectly related to it. Diane Wallis, the president of the European Law Association, in a lecture delivered at Max Planck Institute in Hamburg

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[428] Kahn-Freund, O., cited in Antokolskaia, Masha (2006): *Harmonisation of family law in Europe: a historical perspective: a tale of two millennia*. Antwerp, Oxford: Intersentia (European Family law Series, 13), p. 41.

in January 2014, reiterated the problem of the EU Member States not really wanting to commit and insisting in maintaining their areas of influence. EU is not a place everyone feels belonging to, despite many certainties it creates with regard to basic physical human needs.

The EU, in order to survive, should embrace the social face and be a social union along with the economic side. Given that the need to freely move, establish and create and maintain close emotional relationships would always be part of human intrinsic mid-level needs, the EU, especially the Member States, has to deal with the issue in a truly committed way.

Through harmonization or unification of family law home is supported and recreated. Wherever we go, we need to fell home: to feel that we know how things will develop in another local context and expect procedural justice to take place, i.e. the way/path to and treatment.

CONCLUSIONS AND RECOMMENDATIONS

This thesis should be comprehended as an endeavour to make law more social, accessible and use it for a practical cause like **wellbeing**. I have made 'human suffering' a personal case study, giving my modest contribution to society. We live in a world of uncertainties and social plagues, and finding the healers, the tools that will play a psychological role in healing psychological ailments, is highly dear to me. I want to make law beautiful and positive, evoking the feeling of home. I want to make of this a product of the art of the word, a healing instrument, just like other expressive arts that have become instruments of therapy.

I endeavoured to construct a **<u>theoretical account of law</u>**, which should be tested in practice, as this is the case for all studies/research involving the law and the social, or law in action. Given this, I have concentrated on the law-making process. Yet, I fully agree with Eugene Ehrlich that '*there is no guarantee of justice except from the personality of the judge*' and with Whitman that '*justice is not settled by the legislator and laws – it is in the soul*', but this is to be tested in a second part by testing this account, by tracing law in the court and law in action.

The thesis has tried to answer to the why's and how's of law!

Law is a socio-psychological construction and mechanism, which purpose is to address man-made uncertainties as well as uncertainties produced in interaction with the environment. It makes certainty through making order and establishing expectations that the basic needs will be met and loss will be kept at a minimum. Law should become the new religion for humanity (borrowing Auguste Comte's concept), i.e. something to enter the system of psychological beliefs that are hardly questionable and that should be followed.

What makes law different from other sources of social certainty is its permeability to all walks of life, (the possibility) of being a scientifically knowledgeable authority and to remain impartial. In order for law to optimally achieve and maintain this position, the principle of legal certainty should be enhanced at a constitutional level and guaranteed first and foremost at the law-making process and byproduct, the law actors' endeavors should be focused on the harmonization of procedure and procedure law and the harmonization of legal education and scholarship, and the harmonization of those aspects of family (law) which make the world a certain and safe place or home wherever we go.

These are the answers to the two main thesis' questions, i.e. the meaning of law and its role in the globalization process, elaborated in 4 chapters.

Chapter II elaborated a model of law as a mechanism for addressing uncertainty based on the model constructed and construed in **Chapter I**, about uncertainty and the individual and social mechanisms to reduce or avoid it in space and time.

Uncertainty is mainly connected to negative experiences and expectations of not meeting the basic needs and loss and it is important to be studied, understood and addressed because of the level of stress and anxiety it produces due to these negative actual or perceived states of being. Religion, technology and law are the main mechanisms, which societies have developed to cope with uncertainty, with and in organized structures such as the family, school and the state.

It introduced the principle of legal certainty and why I hold it in such high regards.

In **Chapter I**, I enumerated the psychological (inner) and the sociological (outer) structures which respond to uncertainties that are generated from a range of sources: be they existentialist, ontological, or social. These structures comprise of schemas, heuristics, personal theories, attributions, etc., all to be addressed by law in all its existential phases.

Chapter III endeavored to build a socio-psychological account of law in cross-cultural interaction, emphasizing the developmental aspects that bring optimal certainty to people. This model again builds on the analysis made in the first chapter on how certainty is optimally made.

By providing first an overview of the legal panorama and the factors that make law in itself uncertain, I go on to elaborate how optimal certainty is to be made in the lawmaking process and which part of the written law that ensures more optimal certainty should receive greater and primary attention. Law should be clearly written, little ambiguous, think global and act local. Procedure and procedural law are the areas of law, which best make certainty according to the abovementioned models of making certainty, because they are at the roles levels (who is to do what and when) of less abstract expectations as explained by Niklas

Luhmann, and the harmonization of procedures and procedural law should remain firm in the agenda of lawmakers (at the national and regional level, especially EU level), because of the certainty in time terms and costs and because procedure is less prone to interpretation. This harmonization is to be achieved at the regional or international level, but the application should remain local, as creating transnational law and structures add more to legal uncertainty and difficulty to reach where it is needed. Of paramount importance is the harmonization of legal education and scholarship, which enables for the harmonization of concepts and knowledge and scientific findings. Both areas of harmonization should pave the way for an easier harmonization and unification of substantive law, which should be the eventual objective at the European Union level if it is to succeed as a unique humanity project.

Chapter IV concentrated on more concrete and immediate needs of the society to be protected by law: more specifically, on the need to belong and family which is the basic social structure which addresses uncertainty and ensures belonging through affective and stable relations. After highlighting family's importance and the barriers to an enjoyable family life, the chapter continues with the aspects of family law, which should receive higher attention and intervention in order to ensure individual and societies' wellbeing.

I am aware and humbly admit there are issues, which have not been addressed in this thesis, given that the concepts and their interactions are quite a few. They are all to be retaken in my future academic endeavors.

My most immediate academic interest is the advancement of the 'law and psychology' account, especially its empirical part, i.e. the law finding and the law applying or the ex-post certainty, testing the psychological model or account in practice as well as an in-depth study of the case law of different countries and regional and international courts.

My greatest objective is to carry out a study on how law developed as a psychological need in space and time, and 'draw' a map or history of the legal face of psychology in time, with the psychological characteristics of different historical eras and the law in action at a given period in a given culture. This study will draw upon findings from multiple disciplines such as history, anthropology, literature, etc.

Further academic sub-areas of (personal) research that complement this work are:

- Revisiting truth in an uncertain world;
- Constitutional and institutional uncertainty;
- A study of the perception and interpretation of people of the international law or how international law affects the perceptions and experiences of people crossing borders;
- The role of lawyers when law comes closer and closer to the idea of legal certainty;
- Psychology and statistics very important for the law predictions of the social behaviors;
- An optimal model of communitarianism for accommodating individual's and society's desired and desirable;
- Etc.

Complete certainty is neither achievable nor desirable. And how the Austin heroine *Jane Eyre* would say, 'To prolong doubt is to prolong hope'; or the Polish Nobel prize in Literature Wislawa Szymborska 'Such certainty is beautiful, but uncertainty is more beautiful still.'[429] This is why I always speak about 'optimal certainty', aware that full certainty is not achievable and the prevention and protection role of the states should always be complemented by active human agency in accessing law and justice and enjoying rights.

A few other words

This has been so far the biggest learning exercise of my life, mingled/entangled with day-to-day learning and mutually nourishing each other. Never parted their ways.

As already mentioned, uncertainty is a topic quite dear to me. The discomfort from cognitive dissonance is strong in me and I have a relatively low tolerance for uncertainty. My need to be accurate is strong, and this leads me to think quite a lot about taking action, which does not discord with previous behavior. I love coherence.

I certainly did not want to dwell on known waters. I wanted to take the risk to explore other 'realities'. This was a true challenge and I wanted to take it because of the satisfaction of learning, despite the many uncertainties. And I didn't want my work to be much of an

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[429] https://poets.org/poem/love-first-sight

ordinary outcome, and somehow wanted to defy the traditional rules of lengthy writings, trying to make the points in a concise way, without wishing to repeat what has already been said. After all, isn't this the idea of the doctoral thesis? A genuine piece of work? As my favorite writer Alessandro D'Avenia says, what makes a work great depends on whether it brought something new to the world, or which, at least, make us see the world with new eyes. This is what I tried to do: to look at law with different eyes and bring that sight to the others. I am not sure to what extent, but this is just the beginning of what I wish to do.

My guiding principle in life is searching for the truth: the essence of things, the commonalities, and the universality, for as much as it is and will be possible to me. To me, the emphasis on relativism, more than an endeavor to search for the truth, gives the impression that they are an attempt and a subtle endeavor to demonstrate superiority. In my opinion, the claim that through universalism some countries try to impose themselves to other countries does not hold true. This is the case of cultural relativism, in my opinion.

Last but not least, I would have loved to read Goethe's *Die Wahlverwandtschaften* or Nietzsche's *Also sprach Zarathustra*, in their original language, as many of the great German scholars too. Yet, unfortunately, not possible!

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