

LAW, NORM, NORMATIVITY

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Abstract. The carrying out of the legal relations require to demonstrate the law when it is contested or when it is required to establish the existence or inexistence of a fact or legal act. Over the time the role of the burden of proof was regarded differently, depending on the civil or penal nature of the act: in the criminal law the aim of the burden of proof is to establish the truth and to faithfully reconstruct the facts; in civil law the role of the burden of proof is to guarantee the safety of the parties. From the perspective of a elementary theory of the burden of proof there is a need to clarify the burden, the shift of burden, the object, admissible evidence and appreciation of evidence.

Keywords: gown, legal act, legal action, truth, trial, testimony, presumption, admissibility, legal system

1. What is Law?

A transcendental concept, imposing itself on human reason, a construct of social phenomena merely perceptible by virtue of experience and subject to universal determinism?

“*There in resides the contentious issue of natural law*”¹, as Alexandru Văllimărescu re-iterated, uttering the words of Bonnacase.

It is commonly believed that the issue be addressed in two basic manners, reflective of the two schools of thought contending to reflect the essence of Philosophy of Law: firstly, the *metaphysical, rationalist and idealistic school*, speaking of a natural universal, immutable law imposing itself on human reason, and, secondly, the *positivist, empirical school*, holding that there are no transcendental principles of law, but only social phenomena one confines acknowledgeable within the confines of our understanding.

Until the beginning of the XVIII-th century, nearly all philosophers and jurists had expressed their skepticism relative to the existence of natural law, including the Ancient philosophers, philosophers and theologians of the Middle Ages, who advocated the existence of natural law; Spinoza, Leibniz, Kant,

¹ A. Văllimărescu, *Tratat de Enciclopedia Dreptului*, Lumina Lex, Bucharest, 1999, p. 29 (in: M. Bădescu, *Filosofia dreptului în România interbelică*, Sitech, Craiova, 2015, p. 162.).