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Strategic Report: The Evolution of European Law Sources and Their Contemporary Implications

1.0 Introduction: The Three Sources of Law as a Key to Historical Understanding

This paper aims to analyze the historical evolution of the three sources of European law—legislation, doctrine, and practice—to understand the fundamental transformations of legal systems from the Middle Ages to the modern era. This historical analysis is not merely an academic exercise, but an essential strategic tool for legal professionals, academics, and policymakers operating in the complex contemporary legal landscape. Understanding how and why the hierarchy of these sources has changed over time offers an indispensable key to deciphering current dynamics, from the tension between national sovereignty and supranational legal systems to the return of forms of legal pluralism.

To conduct this analysis, it is essential to clearly define the three sources of law, as they emerge from the foundations of the European legal tradition:

- **Legislation:** The authoritative source of rules of behavior imposed on those who live under its provisions. It represents an authority's desire to regulate society through explicit and formal norms.
- **Legal Doctrine:** The intellectual activity of legal professionals and academics, aimed not only at identifying, interpreting, and systematizing legal norms to make them applicable to real-world cases, but also at designing new and more appropriate ones to respond to emerging values and interests.
- **Legal Practice:** The expression of legally relevant behaviors rooted in the customs of a community, established over time by its members or rulers, or crystallized in judicial decisions that resolve disputes under private or criminal law.

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These three sources are intrinsically interconnected and cannot be studied in isolation. Each source reflects and influences the others, creating a dynamic legal ecosystem. Legislation, for example, is never the sole product of a sovereign's will, but also embodies the intellectual framework (doctrine) and customs (practice) of its time. Likewise, legal practice, while reflecting the concrete choices of individuals and courts, indirectly records the existing normative framework and legal culture.

The central thesis of this paper is that the relevance of each of these sources has changed dramatically over the centuries. The Early Middle Ages were dominated by practice and customary law; the Late Middle Ages saw the rise of doctrine as a unifying force; the modern era established the primacy of state legislation. Understanding this evolutionary dynamic is crucial to interpreting the complexities of current legal systems and anticipating their future trajectories.

2.0 The Early Middle Ages: The Dominance of Legal Practice and Pluralism

The Early Middle Ages, described by historians as an “age without a state” (*an age without a state*), was characterized by an "incomplete political power." This fragmentation of central authority created a vacuum that was filled by a myriad of local and community legal systems. In this context, it was not the legislation enacted by a sovereign that governed people's lives, but rather the**legal practice**, expressed mainly through customary law.

2.2 The Principle of the Personality of Law

The distinctive feature of this period was the**principle of the personality of the law**. Unlike the modern principle of territoriality, according to which the law applies to anyone within the borders of a state, in the Early Middle Ages the law was a matter of ethnicity and blood (*a matter of kinship and blood-ties*). The law was not tied to a place, but to the person and his tribe of origin. The implications of this principle were profound: it made the coexistence of multiple legal systems possible in the same territory (legal pluralism) and intrinsically limited any totalizing ambition.

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of political power, whose primary objective was the control of the territory, not the imposition of a single legal system.

2.3 Custom as a Primary Source

The most important legal source of ancient European law was the**custom** (*customary law*). Far from being a static phenomenon, custom was dynamic, flexible, and capable of adapting to social transformations. Its validity did not derive from a higher authority, but from the consensus and repeated behavior of the community. To be considered a binding legal norm, a custom had to possess two constituent elements:

- **Diuturnitas:**The material element, or the constant and uniform repetition of a certain behavior over time.
- **Opinio Iuris ac Necessitatis:**The psychological element, that is, the widespread belief in the community that such behavior was not a simple habit, but a legal obligation.

2.4 The Encounter between Legal Cultures: Romans and Germans

The barbarian invasions were not just a military event, but a "meeting of peoples at different stages of civilization." This meeting brought together two radically different political and legal cultures. The Roman emperor was *legibus solutus*, free from the laws and supreme source of law. On the contrary, the Germanic king was a*custos iusti*, a guardian of existing law. Unlike the Roman emperor,**the king himself was subject to this law**(*The king himself was subject to this law*). Law was conceived as the heritage of the community, not as an expression of the sovereign's will. Faced with the complexity of the Roman system, the Germanic peoples, who constituted a minority, chose to maintain a distinct law between the victors and the vanquished, giving rise to dualistic legal systems.

The growing complexity of social and commercial interactions between the 9th and 11th centuries, however, put the principle of the personality of law into crisis, favoring the birth of local territorial customs and preparing the ground for the emergence of a new source of legal order.

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3.0 The Late Middle Ages: The Rise of Legal Doctrine and the Birth of the *Ius Commune*

Beginning in the 11th century, Europe experienced a period of extraordinary economic, demographic, and urban growth. The rebirth of cities and the intensification of trade generated a demand for a more complex and sophisticated regulatory framework than that offered by local customs. This need for certainty and legal rationality created the ideal conditions for the rebirth of the science of law, the **legal doctrine**, which became the dominant source of this era.

3.2 The Bologna School and the Rediscovery of Roman Law

The turning point was the rediscovery and reorganization of the texts of the *Corpus Iuris Civilis* of Justinian. The pioneering role in this undertaking was played by **Irnerio** and from **Bologna School** The approach of the first Bolognese jurists, known as **Glossators**, was not that of historians. Their goal was eminently pragmatic: to create a universal and coherent "body of legal principles" to be applied to contemporary needs. Their method consisted of the "gloss," a brief marginal note to Justinian's text that explained its meaning, clarified its terminology, and harmonized apparent contradictions.

3.3 The Systematization of Canon Law

Parallel to the rediscovery of civil law, there was a systematization of the **canon law**, the universal legal system that governed Christianity. The fundamental work was carried out by the monk **Graziano** with his *Concordia discordantium canonum* (known as *Decree*). Applying a method similar to that of the civil lawyers, Gratian collected, selected and harmonized the heterogeneous sources of Church law (decisions of the councils, papal decretals, writings of the Church Fathers), transforming them into a coherent body of legislation.

3.4 The *Ius Commune* and its interaction with the *Own Law*

The fusion of Roman civil law and canon law, known as *Utrumque ius* () both rights"), gave birth to the ***Ius Commune***: a supranational legal system, a culture and methodology shared by European jurists.

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The*Ius Commune*did not replace the*own right*(local laws, city statutes, feudal customs). On the contrary, a dialectical relationship was established in which the *Ius Commune*It acted as a subsidiary law and, above all, as a reservoir of concepts, terminology and principles to interpret, systematise and fill the gaps in particular rights.

3.5 Commentators and Feudal Law

In the 14th century, the method of the Glossators evolved into that of the **Commentators**, whose most illustrious exponent was**Bartolo da Sassoferrato**. The Commentators' aim was even more practically oriented: to apply the terms and principles of Roman law to contemporary reality in order to elaborate a "living law" for their time (*a living law for their own times*). They focused their attention on concrete facts: human relationships and actions insofar as they belonged to a legal dimension. In this way, the principles of *ius commune*could be used to give form and validity to the particular rules of the*own right*. In this context, the doctrine also dealt with systematizing the**feudal law**The feudal "state" was the one in which**private law has taken the place of public law**(*private law assumed the place of public law*), and public duties were transformed into private obligations. Based on customs and personal relationships of loyalty (*fidelity*), was a legal system specific to the feudal classes. To reconcile its property structure with Romanistic categories, jurists developed the distinction between*domain eminens*(the superior right of the lord) and *useful domain*(the vassal's right of enjoyment).

The humanistic criticism of the methodology of the Commentators and the religious fragmentation of Europe called into question the universality of the*Ius Commune*, paving the way for the affirmation of national rights and the primacy of sovereign legislation.

4.0 Towards the Modern Era: The Affirmation of Legislation as a Sovereign Source

The Renaissance, the Protestant Reformation, and the rise of nation-states in the 16th century eroded the universalistic foundations of the medieval world, both religiously and politically. This epochal transition triggered a fundamental transformation in the hierarchy of sources of law:

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legislation, understood as an expression of the sovereign's will, began its journey of affirmation as the supreme source, progressively supplanting customary doctrine and practice.

4.2 Legal Humanism: A Critique of the Medieval Tradition

The first major challenge to the medieval legal order came from the**Legal humanism**. This intellectual movement, known as*mos gallicus*(French method) as opposed to*mos italicus*of the Commentators, proposed a radically new approach to Roman law. Jurists such as Andrea Alciato and François Hotman no longer considered the*Corpus Iuris Civilis*A timeless truth, but a historical product to be analyzed with rigorous philological and critical methods. The impact of this critique was disruptive: while not immediately replacing Bartholist practice, the humanist approach reduced Roman law to a "historical monument," undermining its authority as living positive law. Opening a rift in the universal authority of the*Ius Commune*, favored the development of national legal systems, as evidenced by Hotman's proposal to create a codification that would integrate Roman law with French customs.

4.3 The School of Natural Law: Reason as the Foundation of Law

In a Europe divided by religious wars, the**School of Natural Law (Natural Law)**provided a new philosophical basis for law, no longer based on tradition or religion, but on human reason. Hugo Grotius' revolutionary idea that natural law would be valid even if God did not exist (*etsi daremus Deum non esse*), definitively separated law from theology, transforming it into a system of universal principles. Social contract theories, albeit with varying outcomes, contributed to strengthening the role of the state as the sole legitimate source of legislation. A comparison between Thomas Hobbes and John Locke illustrates this evolution:

I wait	Thomas Hobbes (Leviathan)	John Locke

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State of Nature	War of all against all (*bellum omnium contra omnes*).	Pre-social state relatively comfortable (*fairly comfortable*) in which individuals already possess natural rights inalienable.
Social Contract	Total transfer of the freedom in exchange for security to ensure self-preservation (*self-preservation*), the only way to avoid anarchy.	Bilateral contract between the governed and the ruler. Individuals do not They cede their rights, but charge the sovereign with protecting them; if the sovereign violates the pact, the contract can be dissolved.
Role of the Law	The law is the command of the sovereign (*ius quia iussum*); legal positivism replaces natural law.	The government law must respect and guarantee pre-existing natural rights.

Despite their differences, natural law theories promoted individualism, the idea of universal human rights, and, above all, the concept of the state as the sole entity legitimated to create law. This centrality of state legislation paved the cultural and political groundwork for the great season of codification in the 19th century.

This historical trajectory, from customary pluralism to the centrality of state legislation, has indelibly shaped contemporary legal systems.

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5.0 Summary and Implications for the Contemporary Legal Context

5.1 The evolutionary path of legal sources in Europe follows a clear arc: from a pluralistic, fragmented system based on customary practice, to a universalistic system governed by scientific doctrine, and finally to a monistic model centered on nation-state legislation. This final section evaluates the legacy of this path and its profound implications for the contemporary legal context.

5.2 The following table summarises the dominant source of law in each of the historical periods analysed, highlighting the associated key concept.

Historical Era	Source of Law Dominant	Key Concept
Early Middle Ages (V-XI century)	**Legal Practice** (Custom)	Legal pluralism; Personality of law
Late Middle Ages (12th-15th century)	**Legal Doctrine**(*Ius Commune*)	Legal science; Universalism
Modern Era (16th-19th century)	**Legislation** (Codification)	State sovereignty; Legal positivism

5.3 The historical evolution of the sources of law has left a lasting mark on European legal systems, generating dynamics and tensions that are still relevant today:

- The legacy of the*Ius Commune*It created a common "republic of legal culture" in Europe. Concepts and methods of reasoning derived from the Roman tradition constitute a foundation that facilitates the processes of harmonization and unification of law at the continental level.

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- The persistent tension between national sovereignty, expressed through legislation, and the development of transnational legal systems such as that of the European Union is a direct consequence of the historical trajectory outlined here.
- The return of forms of legal pluralism in the global context recalls medieval fragmentation. The coexistence of state regulations, international regulations and *lex mercatoria*This has prompted some analysts to speak of a "New Medievalism" as a model for interpreting the normative uncertainty of the present.

5.4 The historical perspective, therefore, is not just a chronicle of the past, but an analytical tool for understanding the forces that shape law in the present.

6.0 Conclusion

In conclusion, this paper has demonstrated how the dialectic between practice, doctrine, and legislation has driven the evolution of European law. From the dominance of custom in an era of fragmented power, we moved to the hegemony of doctrine as a unifying force in a world yearning for universal order, finally arriving at the primacy of legislation as the cornerstone of the modern sovereign state. Each phase has left behind structures, concepts, and tensions that persist to this day.

Awareness of this historical dynamic is not a simple exercise in scholarship. On the contrary, it represents an indispensable strategic tool for jurists, legislators, and analysts operating in an increasingly complex and interconnected world. In a global context where ancient tensions between universal and particular, custom and command, pluralism and monism are resurfacing in new forms, the depth of historical perspective offers the clarity needed to navigate uncertainty and consciously shape the future of law.

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A Journey Through European Law: From the Middle Ages to the Enlightenment

Introduction: The Foundations of Legal History

Legal history is the study of the development of legal ideas and institutions over time, a path marked by periods of stagnation and rapid change. To understand this evolution, it is essential to analyze its sources, that is, the origins from which the rules arise. The three main sources of law are: **Legislation**(rules imposed by an authority), the**Legal Doctrine**(the intellectual activity of academics and legal professionals) and the **Legal Practice**(the behaviors and customs rooted in a community). The importance of each of these sources has never been static. This document traces their transformation: from the early Middle Ages, dominated by customary law, to the emergence of a new legal science starting in the 12th century, and finally, with the Enlightenment, to the primacy of legislation as the dominant source of law in Europe.

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1. The Early Middle Ages: A Mosaic of Laws in a "Stateless" Age

The Early Middle Ages can be described as a time of**legal pluralism**In the absence of a centralized and all-encompassing political power, society was a fragmented complex of communities, each with its own rules. Historians define this period as an "era without a state," in which political power was incomplete and law emerged directly from social dynamics.

1.1 The Principle of Personality versus Territoriality of the Law

The most distinctive legal concept of the time was the**Principle of Personality of Law**Unlike our modern system, law was not tied to a person's place of residence, but to their ethnic or tribal affiliation. A Frank, for example, would have followed Frankish law wherever he lived in Europe, coexisting in the same territory with a Lombard who followed Lombard law. This approach made it possible for multiple legal systems to coexist in a single place.

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Principle of Personality	Principle of Territoriality
Definition: The law applies based on a person's tribe or ethnic group (e.g. a Frank follows Frankish law wherever he is).	**Definition:**The law applies to all those living in a given territory, regardless of their origin.
Logic: Law is an inheritance of blood and kinship.	**Logic:**The right is linked to sovereignty over a geographical area.
Result: Coexistence of multiple legal systems in the same territory.	**Result:**A single legal system applies in a given territory.

1.2 Germanic Customs: Law as Experience

The law of the Germanic peoples who settled in the territories of the former Roman Empire was a concrete experience, a set of behaviors rooted in everyday life. Its main characteristics were:

- **Orality:**The laws were not codified in written texts, but were customs passed down orally from generation to generation.
- **Feud:**When faced with a personal offense, it was considered legitimate to resort to private revenge as a form of reparation.
- **Concept of Power:**The king was not seen as a legislator of divine origin, but as a guardian of justice (*custos iusti*), elected mainly in times of emergency, such as war. He did not create law, but preserved it.
- **Social Organization:**Society was essentially a warrior society. The army was the sole and fundamental public organization, and joining the army marked the passage to adulthood.

1.3 The Fate of Roman Law: "Vulgarization"

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With the fall of the Western Roman Empire, the sophisticated Roman legal system did not disappear, but underwent a process of simplification and corruption, known as**"vulgarization"**Exposed to the influence of Germanic customs and general cultural decadence, Roman law lost many of its refined conceptual distinctions.

A clear example is the loss of the difference between**property**(*properties*) And **possession**(*possession*). While in classical law the legal title of ownership was fundamental, in common law the material and factual possession of an asset (possession) became more important than the title itself, drastically simplifying the concept of real rights.

This complex landscape of personal laws, Germanic customs, and a simplified Roman law laid the foundation for the emergence of new legal systems, such as feudal law and canon law.

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2. The Multiple Sources of Law in the Middle Ages

Medieval legal pluralism was not limited to Germanic customs. The absence of a central state allowed the development of a variety of normative systems that coexisted, overlapped, and influenced each other, creating an extraordinarily complex legal landscape.

2.1 Feudal Law: A Personal and Material Bond

The feudal relationship was a personal bond of loyalty between two free men of different ranks, the lord and the vassal. This bond was based on two essential and inseparable elements:

1. **Personal Element (Fidelity):**It represented the total loyalty and military assistance that the vassal owed to his lord. The breaking of this oath of fealty, the*felony*, was considered the most serious crime of all.
2. **Real Element (Benefit):**It consisted of the granting of land, the fief, which the lord gave to the vassal as a means of supporting him and to enable him to fulfill his military obligations.

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This duplicity of rights on the same land (that of the lord and that of the vassal) created a conceptual problem that later jurists resolved by elaborating the distinction between**domain eminens**(the superior right of the lord) and**useful domain**(the vassal's right of exploitation).

2.2 Canon Law: The Law of a Universal Church

While secular power was fragmented, the Church established itself as an ambitious, universal, and highly organized institution, living "according to Roman law" (*secundum legem romanam*), preserving the Latin legal tradition. Its legal system, the**canon law**, was radically different from Germanic customs: it was a system**written**And **centralized**, whose rules came from above (approach*top-down*) in the form of:

- **Canons**of ecclesiastical councils.
- **Decretals**papal.

An emblematic example of the legislative power of the Pope is the***Dictatus Papae***of Gregory VII (1075), a collection of statements that attributed to the pontiff the exclusive power to issue new laws according to the needs of the moment.

The growing economic and social complexity of cities, combined with this patchwork of laws, created an urgent need for a more sophisticated and universal regulatory framework, paving the way for a true cultural and legal revolution.

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3. The Legal Renaissance of the 12th Century: The Dawn of Legal Science

Between the 11th and 12th centuries, Europe underwent a profound transformation. Population growth, the rebirth of cities, and the expansion of trade put customary legal systems into crisis, which were no longer adequate.

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regulating an increasingly complex society. This need for legal certainty and sophistication was the spark that ignited the renaissance of legal studies.

3.1 The Bologna School and the Rediscovery of *Corpus Iuris Civilis*

The center of this revolution was Bologna, where a pioneer named **Irnerio** He began to systematically study and teach the Roman law texts of the Emperor Justinian, in particular the ***Corpus Iuris Civilis***, which had been largely forgotten for centuries. The aim of Irnerius and his followers was not historical or antiquarian; their purpose was eminently practical. They saw in the *Corpus Iuris*, and especially in the **Digest** (a collection of opinions of ancient Roman jurists), a set of living and valid legal principles, a real **"positive law"** to be used to solve the legal problems of their contemporary society.

3.2 The Glossators' Method

The jurists of the Bologna School were called **Glossators** because of their study method. They analyzed Justinian's texts through the **"gloss"**: a short note written in the margin (*marginal gloss*) or between the lines (*interlinear gloss*) of the manuscript. The purpose of the gloss was:

- Clarify the meaning of a difficult term.
- Explain the logic of a passage.
- Create links (cross-references) with other parts of the *Corpus Iuris*.

The Glossators operated on the fundamental assumption that Justinian's compilation was a perfectly coherent body of laws, without internal contradictions, almost a revelation of a timeless legal truth.

3.3 The Birth of the *Ius Commune*

From the encounter and synthesis of the rediscovered Roman law (civil law) and canon law, a great legal and cultural system known as ***Ius Commune*** (Common Law). This was not a body of law that replaced pre-existing local regulations, such as city statutes or customs (the ***own right***), but stood above them as a universal system of principles, concepts and interpretative techniques. The relationship between the two was described

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masterfully by the jurist Bartolo da Sassoferrato with an astronomical metaphor: the*Ius Commune*it was the**sun**, a source of light which, although having no life of its own, illuminated and gave legal life to the**planets**, or rather the*own right*.

Although it*Ius Commune*While legal theory had dominated legal thought for centuries, new critical approaches emerged during the Renaissance, challenging the authority of ancient texts and how they were interpreted.

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4. The Evolution of Legal Thought: From Humanism to the Enlightenment

This period marks an epochal shift in the way law is conceived. The approach gradually shifts from reverence for tradition to critical analysis of texts and, finally, to the affirmation of human reason as the ultimate and universal source of law.

4.1 Legal Humanism (*Moses Gallicus*) against the Medieval Tradition (*Moses Italicus*)

Legal humanists, active especially in France, applied the new intellectual tools of the Renaissance to the study of Roman law: philology (the critical study of texts) and history. Unlike medieval jurists, their goal was to understand the*Corpus Iuris Civilis*as a historical product, a monument of a past civilization, and purify it from the interpretations and errors accumulated during the Middle Ages. This new approach, known as*mos gallicus*(French method), was opposed to the traditional*mos italicus*(Italian method) of the Commentators.

Moses Italicus(Commentators)	*Moses Gallicus*(Humanists)
Objective: Applying Roman law to contemporary reality to create a "living law".	**Objective:**Understanding Roman law as a historical product, purifying it from medieval corruptions.

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Method: Logical and pragmatic interpretation, research of the *ratio* (the rational principle) of the norm.	**Method:** Historical and philological analysis, research into the original meaning of the text in its context.
Attitude towards the text: The *Corpus Iuris* It is a timeless source of legal truth.	**Attitude towards the text:** The *Corpus Iuris* it is a human creation, a monument of a bygone civilization to be studied critically.

4.2 The Birth of International Law and Natural Law

The "Discovery of America" and the Protestant Reformation raised unprecedented legal questions that the old systems could not resolve. **Salamanca School** in Spain, with thinkers like **Francisco de Vitoria**, addressed issues such as the legitimacy of the conquest of the New World and the rights of indigenous peoples. To do so, he resorted to the idea of a **"natural law"**: a set of universal principles, based on reason and valid for all peoples. He argued, for example, that the "discovery" could not constitute a valid title to purchase, since the Americas were not *res nullius* (no man's lands), but were inhabited by peoples organized into societies.

He was the Dutch jurist **Hugo Grotius** to completely secularize this concept. In his masterpiece *De iure belli ac pacis* (The Law of War and Peace), founded an international law based solely on human reason. His famous statement was that these rules would be valid "even if we admitted that God did not exist" (*etsi daremus Deum non esse*), making law a system autonomous from theology.

4.3 The Social Contract and the State: Hobbes versus Locke

Starting from the idea of a pre-social "state of nature," natural law thinkers used reason to theorize the origins of the state and law. This led to two radically opposed visions, embodied by Thomas Hobbes and John Locke.

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Thomas Hobbes (*Leviathan*)	John Locke (*Two Treaties on Government*)
State of Nature: A war of all against all (*bellum omnium contra omnes*). Life is brutal and short.	**State of Nature:** A state of liberty and equality, governed by the law of nature, in which individuals they have rights.
The Social Contract: Individuals surrender almost all of their liberties to an absolute sovereign in exchange for security and order.	**The Social Contract:** Individuals create government to protect pre-existing natural rights (life, liberty, property).
Power of the State: Absolute and irresistible. The law is the command of the sovereign (*legal monism*).	**Power of the State:** Limited and based on the consent of the governed. If the government violates rights, it can be overthrown.

These theories, based on reason and individual rights, overturned the old hierarchical and communitarian vision, paving the way for the revolutions and codification of law of the following age.

Conclusion: The Legacy of a Millennium of Transformation

The development of European law from the Middle Ages to the modern age has been an intellectual and social journey of extraordinary significance. Historical analysis reveals a progression marked by three fundamental steps that have shaped our understanding of the law:

1. **From Custom to Science:** The transition from an oral, fragmented and personal law (Germanic customs) to a system

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complex, written and universal legal system, based on a learned doctrine and taught in universities (the *Ius Commune*).

2. **From Tradition to Criticism:** The evolution from the acceptance of the *Corpus Iuris Civilis* as an authoritative and timeless text for the historical and philological analysis of Humanism, which reconnected it to its historical context, treating it as a human product.
3. **From Authority to Reason:** The shift of the ultimate source of law from authority—whether divine, imperial, or traditional—to human reason, a process culminating in the theories of natural law and the social contract, placing the individual and his rights at the center of the legal system.

These profound historical transformations, from the Germanic feud to Locke's social contract, are not mere curiosities of the past. They form the foundation upon which modern European legal systems rest, from the protection of human rights to the supremacy of state legislation.

5 Medieval Law Insights That Will Rock Your View of History

Introduction: Law Has Not Always Been as We Know It

When we think of law, our mind immediately conjures up a precise image: a set of laws valid within a defined territory, such as that of a modern state. If you commit an offense in Rome, Italian law applies to you, regardless of your nationality. This idea seems so obvious and natural to us that we struggle to imagine anything else. Yet, this is a relatively recent concept in the long history of humanity.

In the past, ideas about what law was, to whom it applied, and where its power came from were radically different, often in ways that we would find counterintuitive today. The medieval legal world, in particular, was a universe

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pluralistic and fragmented, governed by principles that challenge our modern certainties. Understanding these ideas is not just an exercise in historical curiosity, but a way to better understand the roots of our society and our concept of power.

This article will explore five of the most surprising and revolutionary ideas from the history of European law. Prepare to question everything you thought you knew: this journey into the past will forever change the way you think about law, society, and power.

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1. Your law followed you wherever you went.

In the Early Middle Ages, for the Germanic peoples who settled in the territories of the former Roman Empire, the law applicable to a person did not depend on their location, but on their ethnicity. This concept is known as the "Principle of Personality of Law." A Frank was judged according to Frankish law, a Lombard according to Lombard law, and a Roman according to Roman law, even if they all lived in the same city.

This idea is the exact opposite of our modern "principle of territoriality" and is difficult to imagine in practice. Yet, this very principle made it possible for multiple legal systems to coexist within the same territory. The political power of the time did not have the all-encompassing ambition of imposing a single legal system; its primary goal was military and administrative control of the territory, allowing each "nation" to manage its internal disputes according to its own traditions.

As a legal history text summarizes:

The law was tribal, the law belonged to the person, it was a matter of kinship and blood-ties, it did not depend on the place where one lived, but on the ethnic inheritance.

Such a pluralistic system was possible only because the entire social structure was different from ours, starting with a fundamental absence: that of the State as we understand it today. This strange system, moreover, was not eternal: only

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Towards the end of the Frankish period the principle of territoriality began to assert itself, making place of residence more important than tribal affiliation.

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2. The individual did not exist: only the group mattered.

Today, we take the idea of a "state" for granted: a centralized entity with a monopoly on law and power. In the Middle Ages, this entity simply did not exist. Legal historians describe this era as a "stateless era," in which political power was "incomplete." Social reality was not a collection of individuals under a single authority, but a "society of societies."

The most important consequence of this structure was the fundamental role of intermediate groups. Extended families (clans), craft guilds, religious communities, fiefdoms: these were the true foundations of society. They replaced an absent supreme power, offering protection, identity, and rules to their members. A person's survival did not depend on their status as a "citizen," but entirely on their membership in one or more of these communities. Being an isolated individual meant being defenseless and vulnerable.

This mindset is perfectly captured by the following statement:

The medieval person survives only by being a member, a 'socius' of a society, not as a 'singulus' (individual): he is a part of a community and not a solitary man, defenseless and fragile.

This community vision is in stark contrast to modern individualism, but it hides an even deeper difference. This system was not based on the equality of citizens, a value we consider sacred today, but on*privilege*Each group fought for different and more favorable legal treatment than the others. The idea that the law should be equal for all was simply inconceivable.

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3. The most important law book ever was forgotten for 600 years.

In the 6th century, the Eastern Roman Emperor Justinian ordered the creation of the largest and most comprehensive compilation of Roman law ever made: the *Corpus Iuris Civilis*This monumental work, which collected centuries of

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legislation and legal doctrine, is today considered the foundation of countless modern legal systems around the world. Yet, its initial fate was a resounding failure.

In the East, where it was created, the*Corpus*It was soon considered too complex and was quickly replaced by simpler syntheses, such as the*Ecloga ton nòmon* 740 AD. In the West, its introduction to Italy was almost immediately obliterated by the invasion of the Lombards. The work was almost completely lost: its various volumes were dismembered, summarized in simplified and "vulgarized" versions, or simply forgotten.

It is one of the greatest paradoxes in history: the text that shaped Western law risked disappearing forever, spending centuries in oblivion.

In conclusion it is possible to affirm that the corpus iuris civilis moved into a very long night that to some contemporaries must have seemed to herald its death. This long night lasted roughly 6 centuries and the long wait safeguarded the life of those laws.

It was only from the 11th century onwards that, thanks to the scholars of the nascent University of Bologna, the scattered fragments of the*Corpus Iuris*They were rediscovered and patiently reconstructed. The true revolution was the rediscovery of the Digest, the part that gathered the thinking of the great Roman jurists. It was not just a list of laws, but a veritable toolbox of legal reasoning, a model for developing concepts, terminology, and criteria. The rediscovery of the Digest did not mean rediscovering a lost book, but recovering the very project of sophisticated legal thought, sparking a cultural revolution that would shape Europe for centuries to come.

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4. A field could have two "owners" at the same time.

In our world, property is an absolute and exclusive right: if something is yours, no one else can claim ownership. In the feudal system, this idea did not exist. The concept of property was deeply tied to the hierarchical structure of society and the personal obligations that held it together. On the same piece of land, two legally recognized "interests" could coexist, which medieval jurists defined as:

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- ***Domain eminens***(eminent domain): This was the superior right of the lord who granted the land. He maintained a formal title to the fief, as a guarantee of the loyalty and services owed to him.
- ***Useful domain***(useful domain): it was the vassal's right to use, enjoy, and profit from the land. This was the concrete and material possession, the one that allowed him to sustain himself.

We might imagine it as an extreme version of the landlord-tenant relationship, but with one crucial difference: in the modern world, only the landlord has true "property rights." In the feudal system, however, both the lord's right (his title) and the vassal's right (their actual use) were considered legally valid and real forms of "ownership." This structure perfectly reflected the nature of feudalism: the right to a property was not an abstract and absolute power, but was strictly conditional on mutual duties, first and foremost the military service the vassal owed to his lord.

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5. Is absolute freedom a war of all against all... or a paradise of rights?

After centuries of fragmented and personal power, the emergence of centralized monarchies and the idea of the "state" posed a radically new question: where does this power come from, and why should we obey? To answer, philosophers imagined a hypothetical condition of humanity prior to any form of government, the so-called "state of nature." Surprisingly, this same starting idea gave rise to two diametrically opposed visions of power.

On the one hand, English**Thomas Hobbes**He painted a terrifying picture. For him, the state of nature was a "bellum omnium contra omnes," a war of all against all. In this condition, man is a wolf to his fellow man, driven by the most fundamental of instincts: self-preservation.

In the natural state (the condition of mere nature), no law exists, no political community exists —> It is a condition of continuous war and every man fights against another man, being cruel like a wolf (homo hominis lupus).

To satisfy this primary need for survival, individuals enter into a social contract: they surrender all their freedom to an absolute sovereign, the

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Leviathan, which in exchange guarantees the only thing that matters: security. For Hobbes, the only alternative to anarchy is absolutism.

On the other hand, another English philosopher,**John Locke**He imagined a very different state of nature. For him, individuals possess inalienable natural rights (life, liberty, property) from the very beginning. The pre-social world is not a constant war. The social contract, therefore, does not serve to cede these rights, but to create a government specifically tasked with protecting them more effectively. If the government violates these rights, it becomes illegitimate.

The impact of these two visions is enormous. From the same thought experiment emerge two of the greatest political currents of modernity: absolutism (Hobbes) and liberalism (Locke), demonstrating how the justification of power depends entirely on how we imagine a world without it.

Conclusion: The Past of Law, a Mirror for the Present

The ideas we've explored—law tied to person rather than place, a stateless society composed of groups, property as a shared, not absolute, right—show us a fundamental truth: law is not a set of eternal, immutable rules. It is a dynamic, ever-changing product of history, culture, and the needs of a society at any given moment.

Reflecting on these conceptions, so distant from our own, forces us to look at our present with different, more critical eyes. It reminds us that the structures we take for granted today are neither eternal nor the only possible ones. If concepts we now consider pillars of civilization, such as "state" and "absolute property," are in fact so recent and specific, which of our current legal certainties might seem equally strange and outdated in a few centuries?

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The Evolution of European Law Sources: A Strategic Analysis from the Middle Ages to the Modern Era

Introduction: An Analytical Framework for Understanding European Law

The identity of any legal system is revealed by its sources. Understanding their nature and hierarchy is not a mere academic exercise, but a fundamental strategic analysis for deciphering the power structures, cultural values, and evolutionary dynamics of a society. The history of European law, in particular, can be understood through the dynamic interaction of three fundamental sources:**legislation**, the**legal doctrine**and the**legal practice**These three categories form the central analytical framework of this paper, offering a lens through which to observe the transformation of legal and political thought on the continent.

According to their formal definition, these sources represent three distinct modes of law production:

- There**legislation**It is the authoritative source of rules of behavior imposed on the subjects who live under its provisions.
- There**legal doctrine**It is the intellectual activity carried out by legal professionals and scholars, trained to identify, interpret, and systematize legal norms in order to make them explicit and applicable, as well as to imagine new ones.
- There**legal practice**It is the expression of legally relevant behaviors, rooted in the customs of a community and consolidated over time by its members, its rulers, or judicial decisions.

The aim of this paper is to analyze the transformation and interaction between these sources, from the legal pluralism of the early Middle Ages to the rise of the sovereign state in the modern era. It will be demonstrated how their relative importance has changed dramatically, with customary practice giving way to the dominance of doctrine, which in turn has been supplanted by the primacy of legislation. This historical analysis not only illuminates the past, but also offers crucial insights into the tensions, structures, and ideologies that still shape contemporary legal systems and international relations.

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1.0 The Early Middle Ages and the Dominance of Legal Practice: The Age of Custom

The Early Middle Ages, following the collapse of the Western Roman Empire, represented an era of profound political fragmentation and heightened legal pluralism. Strategically, understanding this period is essential because it constituted the foundation upon which the**legal practice**, manifested through custom, emerges as the predominant and almost exclusive source of law. In a world without centralized and all-encompassing political power, law was not imposed from above, but arose spontaneously from the behaviors and beliefs of different communities.

A distinctive feature of the Germanic kingdoms was the**Principle of Personality of Law**Unlike our modern concept, law was not tied to a territory, but to an individual's lineage and blood. This principle allowed for the coexistence of multiple legal systems within the same kingdom: the Romans continued to live according to their "vulgarized" law, while the Franks, Lombards, and Visigoths followed their own tribal laws.

Germanic customary law reflected the social and political structure of the time:

- **Orality:**It was an unwritten right, transmitted orally and rooted in collective memory.
- **Role of the King:**The sovereign was not a legislator creating new rules, but a*custos iusti*, a guardian of existing law which he himself was obliged to respect. A fundamental example is the**Rotary Edict**(643 AD), with which the Lombard king wrote down the customs of his people, not to innovate them, but to preserve their legal identity in the face of contact with Roman tradition.
- **Centrality of the Army:**The army was the only fundamental public organization; joining it marked the passage to adulthood.
- **Justice Mechanisms:**The resolution of disputes was entrusted to mechanisms such as private vendetta (*feud*) or to pecuniary compositions.

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This context gave rise to a marked**medieval legal pluralism**There was no ambition to impose a single legal system. There coexisted the law of the Germanic peoples, the remnants of Roman law, the nascent law of the Church, and, later, feudal law.

However, the increasing interaction between people of different ethnicities made the personality principle increasingly difficult to apply.**Edict of Liutprand** (712-744 AD) represents a crucial detail of this crisis, allowing a Lombard to abandon his own national law on contractual matters to adopt the Roman one. Between the 9th and 11th centuries, there was a gradual transition towards the**Principle of Territoriality of Law**, with the emergence of local customs (*usus terrae*) tied to place rather than lineage.

Custom, as a source of law, is based on two essential constitutive elements:

- **Material Element (Diuturnitas):**The constant and uniform repetition of a certain behavior over time.
- **Psychological Element (Opinio Iuris ac Necessitatis):**The widespread belief that such behavior is not a simple habit, but a legal obligation.

The customary system, effective in a static, rural society, proved structurally incapable of managing the complexity of emerging supra-local markets and new forms of credit. Its fragmented and oral nature made a more abstract, uniform, and sophisticated source of law not only desirable but indispensable: legal science.

2.0 The Rise of Legal Doctrine: The Birth of the*Ius Commune*

Beginning in the 12th century, Europe experienced a true intellectual revolution. The economic and urban rebirth generated a demand for legal certainty and refinement that custom could no longer satisfy, leading to the rise of**legal doctrine**as a new autonomous and dominant source. Law ceased to be a mere social fact and became a science, a specialized body of knowledge safeguarded and developed by a class of learned jurists.

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The core of this transformation was the**Bologna School**, whose rebirth was also fueled by political needs.**Investiture Controversy**between the Papacy and the Empire pushed both powers to seek in Roman law a source of legitimacy for their universalistic claims, transforming the rediscovery of the*Corpus Iuris Civilis* in a strategic necessity of the first order. Here, the pioneer Irnerius rediscovered and recomposed Justinian's work, particularly the Digest. His approach was not historical, but aimed to create a body of universal legal principles applicable to the needs of his time.

The method of**Glossators**consisted in analyzing Justinian's texts through the "gloss": a short annotation that explained their meaning and created connections between the different parts. Through this work, they transformed the *Corpus Iuris* from ancient monument to living positive law, considered a sort of "revelation" of eternal legal principles.

In parallel, the**Canon Law**. The monk Gratian, around 1140, applied a similar methodology to systematize the disparate sources of Church law in his*Decree*, creating a coherent body of legislation.

From the synthesis of these two great bodies of law—Roman law and canon law (*Utrumque ius*)—was born***Ius Commune***This "common law" did not replace local legal systems (*own right*), but acted as a superior and subsidiary legal system. Basically, it provided the entire conceptual apparatus, terminology and legal logic (*ways to argue*) without which not even the*own right*could be interpreted scientifically.

The next evolution was represented by the**School of Commentators**, who adopted a more systematic approach, aimed at adapting Roman principles to contemporary reality.

Characteristic	Glossators (Approach Exegetical)	Commentators (Systematic Approach)
Objective	Explain the literal meaning of the text Justinian (*gloss*).	Search for the*ratio*(the underlying principle) of the norm.

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Method	Textual analysis and cross-references inside the *Corpus Law*.	Application of the Aristotelian logic to build a system.
Relationship with reality	Direct application of the Roman text, seen like a revelation.	Adaptation of the Roman princes to the contemporary reality (*ius proprium*).

The greatest exponent of this school, **Bartolo da Sassoferrato**, consolidated the role of doctrine by defining the relationship between *Ius Commune* (the sun) and *own right* (the planets), consecrating the jurist as an indispensable interpreter of legal science.

This grandiose, apparently eternal doctrinal edifice would, however, be profoundly questioned by the intellectual revolution of the Renaissance, which would subject law to a radical historical critique: legal humanism.

3.0 Humanist Critique and the Basis for the Preeminence of Legislation

Legal humanism, which flourished between the 15th and 16th centuries, represented a movement of intellectual disruption that challenged the very foundations of *Ius Commune* By applying the rigorous methods of philology and history, the humanists not only delegitimized the method of medieval jurists, but also laid the conceptual foundations for a new source of law, more national and linked to the political will of the sovereign: the **legislation**.

The fundamental contrast emerged between the ***mos italicus*** (the pragmatic method of the Commentators) and the ***mos gallicus*** (the historical-philological method of the French humanists). For the humanists, the *Corpus Iuris Civilis* It was not a source of timeless truth, but a historical, human, and contingent product. "Historicization"

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of Roman law undermined its almost sacred authority, transforming it from a living text into a monument to a bygone civilization.

This critical approach had a devastating impact. The humanists corrected the philological errors of medieval jurists and accused Tribonian, Justinian's compiler, of having "contaminated" the original texts of classical jurists. As a result, the *Corpus Iuris*it was downgraded from a source of positive law to simple historical testimony.

In this climate, the revolutionary proposal emerged**François Hotman**. In his*Antitribonianus*(1567), he proposed the creation of a commission to develop a codification of French law, integrating the relevant parts of Roman law with national customs. This proposal represents a crucial strategic moment, marking a paradigm shift: law no longer as*science* interpreted by a caste of scholars (*doctrine*), but as an expression of the *political will*of the sovereign state (*legislation*). The source of legal legitimacy shifted from intellectual authority to political authority.

Not everyone, however, embraced this break. The figure of**Alberico Gentili**, an Italian jurist exiled in England, represents an important middle ground. While appreciating the philological rigor of the humanists, he defended the practical value and legal wisdom inherited from the Bartholist tradition, arguing that, despite its errors, it had provided concrete solutions to real problems.

Humanist criticism, although it did not immediately supplant the*Ius Commune*, irreparably undermined its authority. The ideas of a national law and of a codification desired by the sovereign were grafted onto the rise of the modern state and found a decisive philosophical foundation in the theories of natural law, which would provide the definitive theoretical framework for the primacy of legislation.

4.0 The Modern Era: The Triumph of Legislation and the Sovereign State

The modern era witnessed the consolidation of sovereign nation-states and the decline of the medieval universalistic system. Epochal events such as the

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The Protestant Reformation and the discovery of the Americas made the*Ius Commune*In this new context, the foundation of law was first sought in human reason (natural law) and then identified with the will of the State (positive law).

The transition was triggered by concrete and dramatic problems.**Salamanca School**, with figures like**Francisco de Vitoria**, addressed the theological and legal questions raised by the conquest of the New World. Having to define the status of the Native Americans—who were neither vassals of the Emperor nor faithful to the Pope—jurists were forced to develop a "natural" law based on reason and applicable to all humanity. Vitoria argued that the Native Americans' land was not *res nullius*((nobody's thing) and that they, as rational beings, possessed rights. This reflection laid the foundation for a secularized international law, which found its maximum expression in**Hugo Grotius**He identified universal principles based on reason, valid "even if God did not exist" (*etsi daremus Deum non esse*), such as respect for agreements (*pacta sunt servanda*), thus providing a basis for regulating relations between sovereign states.

The two main theoretical justifications for the primacy of state legislation emerged from the political philosophies of Thomas Hobbes and John Locke:

- **Hobbes and Legal Positivism:**In his theory, individuals surrender all their rights to the sovereign (the Leviathan) in exchange for safety from a chaotic state of nature. The consequence is that the only source of law is the sovereign's command (*ius quia iussum*). This sets the stage for the **legal monism**and the absolute primacy of state legislation.

- **Locke and Constitutionalism:**In his view, individuals retain inalienable natural rights (life, liberty, property). The role of legislation is to protect these rights.**legislation**It is therefore the primary source of law, but is in turn limited by higher principles (a Constitution), thus founding modern constitutionalism.

These currents of thought, despite their differences, established legislation as the preeminent source of law in continental Europe. The process of nationalization of law culminated in the great codifications of the 19th century, beginning with the Code Napoleon of 1804, which marked the definitive triumph of legislation as the almost exclusive source of law.

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Conclusion: Strategic Implications for Contemporary Law and International Relations

The historical trajectory analyzed outlines a clear evolution: from the pluralism of**customary practice**, to the universalism of the**doctrine of jurists**, up to the monism of the**state legislation**This path is the result of profound social, political, and intellectual transformations that have redefined the very nature of law.

The legacy of this evolution is deeply rooted in contemporary legal systems. The tradition of*Ius Commune*continues to influence the legal culture of the systems of*civil law*, but it is the idea of codification and primacy of the law of the State, derived from natural law and positivist thought, that has become the dominant characteristic.

The implications for international relations are equally significant. The foundations of modern international law, based on the sovereignty of States and the principle *pacta sunt servanda*, are a direct legacy of the theories developed by Vitoria and Grotius to overcome the crisis of the medieval system.

Finally, a reflection on the present reveals the ongoing and complex interaction of the three sources. The perennial relevance of this triadic scheme is evident today in the tensions between state legislation, the creative interpretation of constitutional courts (doctrine), and the emergence of spontaneous global norms such as*lex mercatoria*(practice), demonstrating that the challenge of harmonizing authority, reason and behavior remains the beating heart of every legal system.

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