

# I. General introduction

(I.1) *Problem and Purpose.* At present, in the second half of the twentieth century, it is a realistic attitude to suppose that there is hardly any self-conscious human being on earth, who may not once in his life-time be confronted with a change in law. There is no doubt that such a change with respect to the individuals involved might cause emotions of dramatic character and that a change intended as an improvement might be experienced, either deservedly or not, as a deterioration.

Dramatic emotions may however originate as well, if individuals want a change in law and such a change is not effected. So, even if a law-giver acts with the best possible intentions, it might happen that his attitude is not appreciated by those for whom he works.

It appears from experience that it may only be possible after one or two generations of men to establish whether a certain attitude towards a certain change or non-change in law was just or not. Such a historical approach however is determined by its own time, place and conditions, and its results are actually not foreseeable. Similarly it is time, place and conditions which might change a certain opinion on a historical event.

Nevertheless, we do find legal changes in the course of history, which are unanimously considered as improvements, e.g. regulations abolishing slavery, or introducing protection of women and children. In spite of the fact that legal changes in a reverse direction have occurred as well, legal historians generally devote their studies to what they call development or evolution of legal phenomena.

It may be clear that for the purpose of concluding whether legal provisions or even whole legal systems have gone through or are meeting with a process of evolution—a criterion or touchstone is needed describing what legal evolution is. The problem now is that one meets with difficulties as soon as the question is posed of a specification of a criterion for legal evolution. The reason for this is that such a criterion is dependent on subjective opinions concerning law and society, which in their turn are dependent on subjective religious or

philosophic convictions.

Comparison now of distinguished opinions on legal evolution might lead to the formulation of a catalogue of principles, common among men of different religious and philosophic convictions, by which specified objective criteria for legal evolution could be established.

However, one can raise serious objections to such an approach. The criterion, thus found, necessarily forms a minimal body, only selected because it is the expression of common ideas among different subjective convictions. It might be that something objectively true is omitted because it is not commonly shared. In as far as the discovered criterion is based on religious opinions, it is based on ideas which one should presumably believe implicitly without any actual opportunity to check them by scientific methods. In as far as the found criterion is based on philosophic ideas, it indeed in principle might be subject to scientific researches into its justness, but such researches are frequently impossible because the actual stages of knowledge and experience may not yet permit them.

Another approach towards a solution might be an investigation into the principles of legal evolution which is based on scientific data and theories, as well as that part of philosophy which is based on results of science.

As to a scientific theory, naturally in this respect the restriction has to be made that it is not a pure speculation, but a hypothesis based on facts and therefore, in principle, suitable for control. Moreover, if there is competition between more theories on the same subject, a choice has to be made between these theories on scientific grounds. A possible foundation of principles of legal evolution on a scientific theory can therefore never attain the same justness and objectivity as such a foundation on scientific facts, but such a foundation on scientific theories could certainly be more just and more objective than a foundation on metaphysical convictions.

The question now arises whether there indeed exist scientific facts or theories which can be used for the foundation of such a hypothesis. For trying to find an answer to this question we have to look at the sciences which are relative to investigations into human beings. Then we meet:

- 1) biology, studying human organic life in relation to non-human life;
- 2) paleontology, studying human life in the periods of its beginning;
- 3) history, studying human life during its movements in

- time;
- 4) psychology, studying all internal and external human activity;
  - 5) sociology, studying actual human behaviour in community-life;
  - 6) the sciences of information and communication which study the nature and transmission of information both in living nature - human societies included - and in the physical area;
  - 7) auxiliary sciences like ethnology and formal logic.

The progression of these sciences has been purposely chosen for demonstrating their relationship. In this progression one may distinguish the various sciences from each other, but it is impossible to separate them: they shade off one into another. This close relationship of sciences makes us wonder whether they could not have something in common that might be useful in approaching our aim of finding the principles of juridical evolution.

At this point of our investigation we indeed have the opportunity to meet a conception in which all these sciences participate and which is moreover one of the greatest conceptions of science - namely ..... the conception of evolution.

It is in this conception, which embraces scientific theories as well as scientific facts, that we might succeed in finding the elements necessary for basing principles of legal evolution on results of scientific investigations. This expectation might be enlarged because of the fact that both biology and paleontology, on one side, and the social sciences on the other, have developed theories of evolution covering both the biological as well as the social area; in fact, theorists of evolution have been, and still are, searching for one universal body of principles governing evolution not only in the areas of biology and social sciences, but in those of the physical world as well. Examples of such endeavours are the conception of Ernst Haeckel discussed in (*I.C.5*), the search for a unity of sciences by the Wiener Kreis and the field theory of Albert Einstein.

Our purpose being to discover principles of juridical evolution we thought it therefore worth-while to investigate whether biological and social theories of evolution might provide us with materials for the attainment of this end.

During our investigations it appeared that even in modern theories of evolution, principal aspects of reality are not treated. A similar conclusion was reached when studying fundamental structures of law. In both groups of

theories it was the results of the modern theories of information and communication that appeared still almost completely lacking.

Integration of theories on information and communication, especially theories concerning cybernetics, with data derived from biology, social sciences and law, brought about as a consequence the necessity of formulating new conclusions. This consequence resulted in a new theory of evolution, applicable in the area of law and based on principles of value in both biology and social sciences. Another consequence of this study was the necessity of exposing fundamental structures of law in, to the average lawyer, a somewhat unusual shape, by application of cybernetics and formal logic to juridical constructions. It might be that this approach offers some perspectives for the solution of centuries-old fundamental problems of legal theory and practice; the interested reader is referred to the chapters relating to this matter.

It is with feeling of gratitude to the great theorists of evolution that the following pages are presented. That their theories are not all treated equally is due to the principle of selection that was applied with respect to the final cause of this study, viz. the search for principles of legal evolution.