THE FUNCTION OF LAW AND THE METHODS AND FUNCTIONS OF LEGAL SCIENCE

PREFACE

This paper is prepared for the World Congress on Philosophy of Law and Social Philosophy, Madrid, September 1973.

It does not deal directly with the theme of the Congress which is «The Functions of Law in Society», but with two fundamental questions which are relevant to the discussion of that theme.

Firstly, the discussion of the functions of law in society entails necessarily a discussion of the general question of method, which is and will remain a major question. That is, the question of what methods are available and are valid for the study of law in society, and what are their interrelationships and their relationships with reality and theory. In other words, the occupation with the «is» and the «ought» of the functions of law in society leads to the occupation also with the «is» and the «ought» of the methods of the study of those functions.

In the study of law, generally speaking, attitudes towards the question of method manifest two characteristics; self-defence (which even involves attack) and pluralism. Students of law are still engaged in the defence of the relevance and validity of their methods and pluralism is being admitted in order to reach a compromise.

The second question which the discussion of the functions of law entails is the question of the social functions of legal science itself, since legal science represents the intellectual effort which is made to cope with law (as a social phenomenon) as a base for intelligent action regarding the various aspects of law in society. In other words, the cognition of the relevance of realism to «law» implies the cognition of the significance of the impact of legal science on the social functions of law.

In this paper I deal mainly with the «ought» of the method. I attempt at systematizing the structure of legal science by analogy to the structure of the process of scientific discovery, then I reach some conclusions con-

cerning the structural-functional analysis and the social functions of legal science.

For the sake of clarity, I begin with some general notes as a background for the analysis and the conclusion.

I. GENERAL NOTES

1. The field of knowledge known as «law» deals with the study of the various kinds of legal norms in society: administrative, civil, penal, etc. As a matter of course it also deals with the methods of arriving at, of making, of explaining, of applying, of administering, of evaluating, and of changing legal norms.

Recently this complex of kinds of norms and the methods relating to their study are being described as «legal science». Some also speak of «legal sciences» as referring to the studies of branches of law and to the different conceptions regarding law maintained by opposing economic and political systems.

2. The major premise of this paper is that «branches of law connote kinds of legal norms not «sciences» and that there can only be one «legal science» since, apparently, there are common characteristics of all legal systems.

That the study of law can be called «legal science» is verified by the fact that the study of law has tendencies which fulfil the requirements of a «science»: validity and practicability. Validity is fulfilled by the use of scientific research methods. Practicability is fulfilled by the use of findings of legal science and of other branches of science to cope with social change, planning, the control of technological innovations and some other social questions.

3. The growth of social science and the ever increasing impact of its methods and output on legal science have been contributing to a high complexity of the latter. As a result, the need is becoming greater to search for a model whereby this high complexity can be replaced by a clear picture which will help to distinguish between the various elements of legal science and their interrelations.

4. The way of building a scientific model is the «general system analysis» which is the analysis of the system of a certain object in terms of «structure-function», i. e. the units it is made up of, the processes of the interrelations of these units, and their functions to maintain themselves, each other and the system as a whole.

5. The starting point of the general system analysis of any branch

of science should be the process of scientific discovery itself. This process has three major components:

- *reality* or fact.
- *method* or the ways of applying the mind to reality.
- *theory* or output, which also includes hypotheses.

6. In what follows I will attempt on this basis to outline the general system analysis of legal science. Then I will provide a diagram of the system as a whole and of its feedforward and feedback cybernetic relations.

Needless to say that the general system analysis of legal science is not the same as that of the legal system. Yet, the general system analysis of the legal system is relevant to that of legal science.

II. THE SYSTEM OF LEGAL SCIENCE

7.1. *Reality as object of legal science*

Aspects of reality which are objects of legal science comprise three major clusters of phenomena:

- environmental components of the legal system.
- structure of the legal system.
- manifestations of the legal system or life branches of law.

7.1.1. Environmental components of the legal system: nature, history, ideology, politics, law, administration.

7.1.2. Structure of the legal system: sources of law, branches of law, anatomy of law.

7.1.3. Manifestations of the legal system or life branches of law in society: constitutional law, penal law, commercial law, family law, international law, etc.

7.1.4. The scientific activity of investigating into and reporting on those aspects of reality as the object of legal science provide case studies of given legal systems (macro case studies) and of parts of given legal systems (micro case studies).

7.2. *Method of legal science:*

Just as the manifestations of the legal system lead to the life branches of law in society, the various methods of research and the various levels and scope of their application lead to the methodological branches of legal science. Therefore, these methodological branches can be enumerated as follows:

7.2.1. Methods of research:

- analytical positivistic;
- sociological;
- logical (formal and symbolic);
- applied (social functions, reform, use of physical devices and applied natural and social sciences);
- philosophical (concerning alternatives of choice beyond scientific knowledge).

7.2.2. Levels and scope of research:

- case method, macro and micro;
- comparative method, macro and micro. Six levels of comparison can be listed here:
  - — natural and social setting;
  - — structure of the legal system;
  - — functions of the legal system;
  - — content of law;
  - — working of law;
  - — the state of the methodological branches of legal science in a given case or cases.

7.3. *Theory of legal science:*

The output of the study of the phenomena of the legal system by the use of the method of legal science provides the theory which is the body of legal science.

As a result of the variety of method of legal science there is a variety of branches of the theory of legal science. Thus, the theoretical branches of legal science which include universal characteristics of law as a social phenomenon and peculiar characteristics of law in different societies. The theoretical branches of legal science can be enumerated as follows:

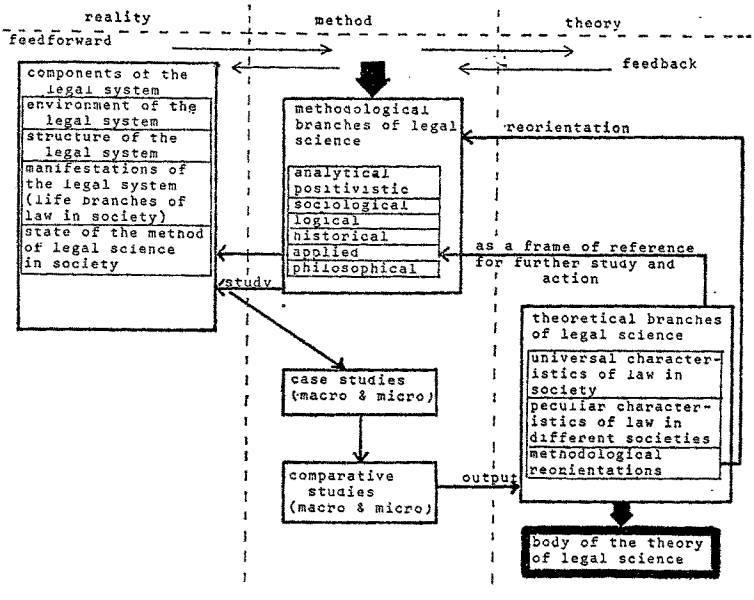
7.3.1. Theoretical branches of legal science:

- anatomy of law;
- types of structures of legal systems;
- geography of law;
- anthropology of law;
- evolution of law;
- acculturation of law;

- development law;
- semantics of law;
- logic of law (formal and symbolic);
- axiology;
- jurimetrics;
- the science of legislation;
- technology of law (directives and methods to improve legal machinery and legal reform);
- legal education;
- reorientations on the method of legal science.

III. A MACRO CYBERNETIC MODEL OF THE SYSTEM OF LEGAL SCIENCE

8.1. In the above, the feedforward relations of the process of legal science have become clear. The feedback relations take place when the content of the theoretical branches of legal science is communicated to (a) the various parts of the legal system through the applied method, and (b) the methodological branches of legal science.



"MACRO CYBERNETIC MODEL OF THE SYSTEM OF LEGAL SCIENCE"

8.2. The aforegoing diagram of the macro cybernetic model of the system of legal science illustrates the major elements of the process of legal science and their feedforward and feedback interrelations.

IV. CONCLUDING NOTES

9.1. The general system analysis of legal science leads to a clear distinction between legal systems and their parts as objects of legal science and between legal science itself as the output of knowledge concerning law in society. This distinction ought to be born in mind in order to avoid a misleading confusion between the two things. This will not mean that one should overlook the interrelationships between reality and science as an activity and output. On the contrary, the distinction at hand will make one able and in a better position to appreciate thoxe interrelationships, having separated the two things on the abstract level. It will further help to know what can be drawn from case studies for the purpose of comparison and what can thereafter be drawn into the body of the theory of legal science.

9.2. An implication of the distinction above is that the legal scientist, as if operating in a laboratory of natural science, must proceed in his enterprise by defining the object of his research, then by bringing it, as it were, under the magnifying glass of the method (or methods) and on the level and scope of research, and then by observing the findings which this process leads to. His report must be a clear, precise and exact record of the process in order to be accessible for easy and rational integration into the further process of legal science and to have thereby a bearing on the feedback on both the pure and the applied sides of legal csience.

9.3. In the use of method, self-defence and its repercussions of attacking other methods should be replaced by specialization in method and the respect of contributions of specialists of methods, each from the point of view of his field.

Moreover, in the combination of method, pluralism should be directed further towards synthesis, which is the end-in-view of the interdisciplinary integrative approach.

9.4. The model of the system of legal science will better perform the functions of models the more it is seriously studied, commented on and elaborated. Since it is the writer's intention to continue the study of the system of legal science, comments are greatly needed and will be highly appreciated.

As enumerated by Deutch (The Nerves of Government, 1966, pp. 8-9), the functions of models are:

- *organizing:* i. e. «the ability of a model to order and relate disjointed data, and to show similarities or connections between them that had previously remained unperceived»;
- *predictive:* i. e. they imply some «predictions».
- *heuristic:* i. e. «leading to the discovery of new facts and new methods;
- *measuring:* i. e. they «may serve as indicators» or themselves help to obtain a «measure».

9.5. Efforts should be combined to arrange the findings relating to the body of the theory of legal science according to the model of its system. The major sources of such findings are:

(a) Works on comparative studies on life branches of law and on the state of the methodological branches of legal science in given societies.
(b) Works on methodological branches of legal science.
(c) Works on the theoretical branches of legal science.
(d) Relevant findings in works of other sciences as pointed out by their specialists and by legal scientists.

The task of collecting and arranging those findings from those sources, and of course of disseminating them, is of such a volume that it can only be achieved through an international centre which will operate by the aid of international organizations in the field of law and of national committees in all countries, and which will make use of modern devices of storage and retrieval of information. A project of an International Centre of Legal Science (I. C. L. S.) has thus been set up in The Hague (since February 1972) in order to achieve this and other related goals which are indispensable for the promotion of legal science.

9.6. The social function of legal science is inherent in its task which is to investigate reality by the use of methods and to point out and synthesize the scientific facts resulting therefrom. In order to achieve this task in the most scientific and efficient manner, legal science has the subsidiary function of ordering its elements and the process of their interaction towards its final end. As is evident from the above, this subsidiary function cannot be achieved without a general system analysis of legal science itself.

Legal science has another subsidiary function, namely, to provide

its professionals with the material whereby they can form and reform the activity and the output of their profession. The achievement of this second subsidiary function is apparantly dependent on the acquisition and the ordering of the findings of legal science, which can only be realized through the general system analysis of legal science and the medium of the I. C. L. S. It is only through these two devices that legal science as a profession, and thus legal scientists, will reach a frame of reference as a basic universal standard for their activity and will thereby promote the grounds of expertness and prestige which are necessary to identify and distinguish their scientific role as clearly as possible from that of politics and politicians. And it is through this way that legal science and legal scientists will be able to render better service to politics and politicians.

What is thus the final end of legal science? From what is mentioned about the social function and the subsidiary functions of legal science, it becomes clear that its final end is the promotion of rationality to the widest possible scope in the various aspects and branches of law, in theory and in practice.

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