LAW AS A PROCESS
(A Preliminary Study)

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We submit as a *GENERAL HYPOTHESIS* that a greater and more accurate understanding of the nature of law, a clearer and deeper insight into its constructs, symbols, operations and development, and a key to the solution of its problems can be obtained by viewing it in the context of the following:

> *HYPOTHESIS 1* — That law is the (*PROCESS* of the) application of the totality of human knowledge (experience), through the mechanics of community decision-making, to determine and direct the prospective (future) behavior of men in society. Men, therefore, through their community decision-making processes, play a vital role in the development of law.
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> *HYPOTHESIS 2* — That not only does the evolution of men in society always exact this (i.e., hypothesis 1) as a *means* of survival, but also, conversely, that this (i.e., hypothesis 1) imposes itself as a *condition* for survival, thereby playing a vital role in the direction of the course of evolution of men in society.
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> *HYPOTHESIS 3* — That the development of law and the evolution of men inevitably converge towards each other, seeking that balance which is their congruity. All stages prior to this are conditions of imbalance, and it is this very factor that forces the seeking of stability.

THE PRINCIPAL HYPOTHESES, GENERALLY

HYPOTHESIS 1, briefly, postulates that law is collective experience (in its widest possible sense) applied collectively to determine and direct ("manipulate" included) the course of prospective collective action (*in* and *as* a group), and that this collective application is done through the process (i.e., mechanics) of community decision-making. The concept may be viewed somewhat roughly from the following schematic representation:

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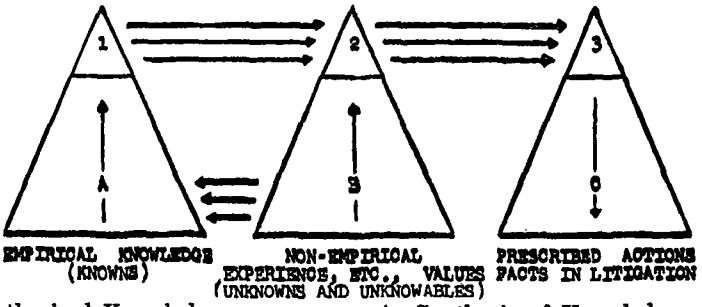
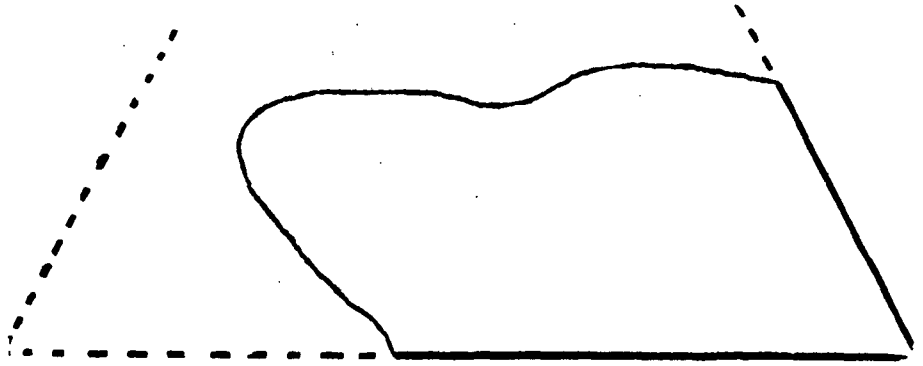


1. Synthesized Knowledge
2. Community Decisions
3. General Legal Propositions

A. Synthesis of Knowledge
B. Resolution of Value Conflicts in Community Decision-Making Processes
C. Analysis of Legal Propositions

This presents matters ideally and from one angle may be taken as a representation of *de lege ferenda*. The other angle (i.e., viewpoint) is a higher idealization resting on the assumption that all the subject matter of the middle triangle (which are actually the unknowns and unknowables, discussed *infra.*) are reduced to scientific study and synthesis. The left and middle triangles will then merge and the scheme will be represented only by two triangles. All triangles, except that representing knowledge, will, however, vanish at the very point of perfection (*infra.*). These idealizations are of course impossible, but their conception is necessary for an understanding of the hypothesis.

The left triangle embraces the totality of human (empirical) knowledge and experience. In its present state it may be viewed as:



the imperfect triangle that it is. Such is also true of the other triangles.

The middle triangle acts as a grid or sieve. Here is where metaphysical experience, values, pseudo-knowledge, and even superstri-

tions, etc., etc., come into play, i.e., where the unnkowns and unknowables (*infra.*) interact.

The movement in the left and middle triangles are upwards, that in the right triangle downwards. Of course, within each triangle, there are both upwards and downwards movements but these are not to be confused with the general flow.

The relationship of the subject matter of the triangles is very complicated. However, it may be stated that part of the subject matter of the middle triangle is included in that of the right triangle; that of the right triangle is included in that of the left; and part of that of the middle continuously flows therefrom to the left. The last includes those that become reducible to scientific observation and synthesis, the flow depending upon the developments in such process; it roughly corresponds with portions of social science. The second we refer to as the science (?) of law. The first we know as (basically) political law and constitutional law, the rules for the making of rules — the machine tools, the direction of the behavior in the direction of behavior (or the "secondary rules" as termed by Hart).

As it will be seen, all experience, social phenomena, interpretations thereof, economic and political theory, ideologies, metaphysical experience, etc., etc., have their place in this scheme.

HYPOTHESIS 2 views law against the setting of the continuity of the evolution of man. The evolution of man has not ceased, but persists in what is now called psycho-social evolution (Huxley, Teil,-hard, Moore). In this process, law was developed as a *means* of survival. Survival requires a semblance of order, since chaos will lead to self-extinction. But in order to achieve its purpose, law, of necessity, has to impose itself as a *condition* for survival (i.e., those who do not conform to it find themselves under circumstances designed towards their extinction and therefore die out; those who conform to it are afforded conditions favorable for their survival and therefore survive.). Thus law plays a very vital role in the moulding of behavior, attitudes, etc., a process which is greatly accelerated because of communication, education, families, etc. (Moore).

HYPOTHESIS 3. This effect, however, is not unilateral. The reaction (or counter-action) is the shaping or moulding of law by value choices expressed through the mechanics of community decision-making processes, and the assimilation (the taking into consideration) of which is vital for the survival of the legal system itself (*infra.*). There is, therefore, a mutual interaction which tend to converge towards congruity, which is the state of balance.

ANALYSIS

I. PART I (*HYPOTHESIS 1*).

A. *Law and Symbols.**

1. *HYPOTHESIS 1.1* The symbols of law, all reducible to the form "$O \supset [(a \vee b \vee c \ldots \infty \supset X])$" are symbols of a hypothetical intention to bring about, under certain contingencies, certain consequences, the ultimate of which is the exertion of physical force. (To state that they are threats [Austin, *et al.*] is not quite accurate, though in linguistic structure they are very similar. The use of the hold-upper as a physical analogue, though enlightening, in a way, also tends to be misleading [Hart, for one, criticizes it as such.]. This misleading tendency arises from the confusion of law, which is a process as herein described, the symbols of law which should not be taken as the law itself, and the effects which the law as a process and its symbols produce, which are a psychological and a sociological phenomena ["moral causation" according to Fried, or the feeling of "ought" or concept of "duty" according to Hart]. Actually, though, the linguistic formulation is immaterial, except as a matter of approach. [The equation "a + b = c + d" remains the same even if it is expressed as "a = c + d — b", or "O = c + d — a — b".] This particular approach is, however, of utmost importance because it enables us to segregate those *portions* of the symbols of law which have empirical referents [*designata*] and those which do not, for it is only thuswise that we can advance in our analysis and knowledge. [Even in simple algebra we rewrite our equations into forms which allow us to advance, otherwise we can never solve them.] To insist on the discussion of [metaphysical] concepts which we cannot relate to referents would only mire us in verbalistic circles. [According to Popper, metaphysical statements have no informative content.])

The intention symbolized is, furthermore, a mythical one (subanalysis, *infra.*)[1] It is therefore a useless and a pointless task to

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* "If the soul could speak, alas, it is no longer the soul that speaketh." —Plato.

[1] In the case of a person, an intention is real enough as a state of his own mind, and to others, as they may infer from his overt acts. But a group of men cannot have a collective mind and conseqeuntly cannot have a collective intention.

Therefore, the intention of which the terms and propositions of law are symbols is a mythical one. The only conceivable correspondence which this intention may have with reality is as a concensus of individual intentions, but this possibility holds only for a given point of time. It cannot be possible for all time (because, to be more accurate, we have to view law in a whole spatio-temporal context), and while we may discount the intentions of the dead (which we do not) or infer them from their (past) overt acts (which we do), we cannot possibly consider the intentions of the future, for unborn children cannot possibly have intentions (although we assume or guess them). At any rate, whether at a given point of time or for all time, the moment such a corres-

search for the empirical referents (*designata*) of the symbols of law (as thus viewed, i.e., as representing a mythical intention) for they have no correspondence in reality (sub-analysis, *infra.*). It must be well noted, however, that *portions* of the symbols of law do have correspondence in reality (i.e., empirical referents), for in "$\square$ [(a v b v c... ∞) $\supset$ X]", "a v b v c... ∞" are complexes of empirical facts and "X" is usually the empirical fact complexes constituting deprivation of life, liberty, or property (sub-analysis, *infra.*).

2. *HYPOTHESIS 1.2.* Due to the vastness of the considerations they have to embrace, the inherent nature of language itself, and the pressure for action in the face of imperfect knowledge, the symbols of law, in expressing the mythical intention which they seek to express, are of necessity — but within certain limits which constantly narrows with development — ambiguous ("of an open texture" — Hart).[2] Our efforts should not stop with this realization, however, for the task is to reduce ambiguities to the minimum possible limits.[3]

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pondence is achieved, law itself disappears. This will be discussed as part of the paradox of *de lege ferenda.*

If we were to define law as "the ambiguous expression of a mythical intention", we would not be far from the truth. (We shall have defined, very accurately in fact, the symbols of the *lex lata.*)

It would seem that the application of the symbols of law to actual cases would give them referents, but no. For the decision of a case, or a number of cases, *indicate* only (but is not) part of the intention. They do not fulfill or satiate the intention. The case or cases are terminated and finished, but the intention remains, strengthened in fact by its having been carried out. (Conversely, a repeated failure to carry out the intention makes the law in question a dead one.) Moreover, the carrying out of an intention is not itself the intention. Also, an intention is always prospective, no matter how many times it is carried out.

The acts of the legislature, the doings of the executive, the cases decided by the judiciary are taken as the "overt acts" from which the intention represented by the symbols of law may be inferred. And because motive is relevant to intention, the history and circumstances of these "overt acts" are also examined. (Note from the sub-analysis.)

[2] To use an analogy — the symbols of law are containers (of the hypothetical intention referred to in hypothesis 1.1) which, when made, are only partly filled. The shape and size of the unfilled part is determined by working upon incomplete data. Knowledge and experience enable a further and further filling of these containers, and their unfilled parts, as they are filled, are gradually hammered into the correct shape and size. If the necessary corrections turn out to be so much as to destroy the containers, they are discarded and replaced. If the case is otherwise, the intention represented by the symbols of law become more and more refined and fixed. (Note from the sub-analysis.)

[3] Let us assume for the moment that all we have to deal with in the universe are physical objects, and let us assume, further, that if we were only specific as to which object we refer, then the demands of communication shall have been satisfied. It would thus be obvious that when we wish to refer to any particular object the most accurate way of indicating it would be to point it out. But even if we were to assume, furthermore, that the universe were only a single room with no more than a score of physical, "pointable", objects, and that there are only two intelligent beings to transmit what is in the mind of one to the mind of the other thuswise, the inconvenience and difficulty, if not outright impossibility, of communication would at once be realized.

3. What are the required empirical referents (*designata*) of "a v b v c ... ∞"? This is always the immediate question in any legal problem. In any litigation, the contest always resolves itself

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The only alternative to ceaselessly running about the room and pointing like mad would be to arbitrarily assign a symbol to each and every single one of the twenty objects inside the room. (There is another alternative, which unfortunately is not as yet feasible, and that is telephatic communication. In our assumed situation one intelligent being could picture in his mind the object referred to and transmit the mental image directly to the mind of the other.) Now then, there are several ways of symbolizing. The two intelligent beings inside the room could agree that the right thumb would stand for one object, the right forefinger for another, and so on and so forth, until each of the twenty objects in the room correspond to each of their digital members. Two new problems are introduced at this point. First, how could they ever arrive at such an agreement? And second, the forty digital members of the two intelligent beings are now introduced into the room, and *these, in themselves, are objects.* But let us disregard these complications for the moment. Another way would be to use written symbols, say the letters "A" to "T" to stand for each single object in the room. Again similar problems arise at this point. Of course, one intelligent being could make the symbol "A" and then point to one object, the symbol "B" and then point to another object, and so on and so forth, until the arbitrary correspondence of each symbol to each object is understood and accepted. It is to be noted that we are introducing into the room the symbols "A" to "T", as well as writing materials, *which, in themselves, are objects.* But, again, let us disregard these complications for the moment. A third way of symbolizing would be by an articulation of the names of the letters "A" to "T". One intelligent being could articulate the name of the letter "A" and then point to one object, articulate the name of the letter "B" and then point to another object, and so on and so forth, until the arbitrary correspondence of each sound to each object is understood and accepted. No new objects are introduced into the room.

The first way of communicating strikes one as quite funny, the second one is a little bit more dignified, and the third one is really the simplest for our purposes. Of course there are other ways of symbolizing, such as by using sticks, or stones, or gestures; but the idea in all of them is to avoid the task of pointing to an object in the room every time one wants to refer to it by using symbols which have *a strict one-to-one correspondence* with each object within the room.

In this situation as imagined, *there is absolutely no room for confusion.* When one intelligent being articulates the name of letter "A", the other has *no doubt whatsoever as to what he is referring.*

Let us continue to assume that all we have to deal with in the universe are physical objects, but let us remove the arbitrary limit of twenty. We would then be faced with the fact that we have to deal with an infinite number of objects. It will at once be realized that it would be impossible to give a symbol for each and every single object in the universe. (This is putting it mildly. To refine the problem leads to a more maddening situation, for what is an object? An object is composed of parts which are composed of molecules, which are composed of atoms, which are composed of a variety of particles, and possibly etc., etc. All objects are in fact classes [Popper].) Neither is it necessary; and certainly it would be foolish to name every single grain of sand on earth, nor even every single head of cattle in a ranch, nor even every single object in a room. (To avoid confusion at this point, a distinction has to be made. One may say that he can name all the objects in a room. He means, of course, that he can say, "That is a chair. That is a table. That is a desk. That is a piece of paper. This is a pencil." But it must be realized that he couples the words used, i.e., "chair," "table", "desk", "paper" and "pencil" with actual pointing. The word "chair", for instance, does not refer *only* to that *particular* chair in that *particular* room.) Of course, when certain purposes demand such a strict one-to-one correspondence, as in the case of human beings, for instance, we give them names like "Juan de la Cruz" or "John Smith", but even then, the number of persons dealt with is so great that coincidental duplication of names, including middle names, often times occur (specially if we include also dead persons). It will be seen that when either in ordinary everyday

to the question as to which individual intention coincides with the mythical intention (i.e., in particularizing the empirical referents of

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life or in any branch of knowledge, particularly the more specialized ones, a strict one-to-one correspondence is necessary, the same is achieved and fulfilled, either to a 100% degree of accuracy, or to such degree of accuracy as may satisfy the requirements of any particular purpose. (Cf. the theory of probabilities of reference—Popper.) The smaller the field the more accurately could this be done. (It may be mentioned at this point that the only way to achieve a strict one-to-one correspondence between symbols and objects, when the objects are infinite, is to use a system of symbols which is likewise infinite. The only such system so far invented is the system of numbers.)

But even discounting the fact that it is not possible to give a name for each and every object in the universe, another inconvenience would occur. To realize this, let us go back to the imagined situation of a room with only twenty objects, each represented by the articulated names of the letters "A" to "T". One does not always wish to refer to any particular one of them. One may want to refer to any of the objects represented by the articulated names of the letters "A" to "G", not caring which particular one. (This is already ambiguity in a sense, but the area of reference is definitely bounded. It likewise would already introduce the concept of "or", but let us disregard this complication for the moment.) Everytime one wants to refer to any of the objects represented by the articulated names of the letters "A" to "G", he will have to say "A or B or C or D or E or F or G". Since this way of communicating would be unwieldy, another symbol may be introduced, say the articulated name of the letter "X". The same thing could be done, say, when one wants to refer to any of the objects represented by the articulated names of the letters "H" to "N", not caring which particular one. In order to avoid saying "H or I or J or K or L or M or N" everytime, one could simply articulate the name of the letter "Y". And when one wants to refer to the objects represented by the articulated names of the letters "O" to "T", not particularly caring which one, then instead of saying "O or P or Q or R or S or T" everytime, one could simply articulate the name of the letter "Z". This process does not end here. A symbol, for instance, could be used when one refers to the objects represented by the articulated names of the letters "A" or "D" or "J" or "R", not caring particularly which one. One could even use a symbol to express that one wants to refer to any of the objects referred to when he articulates the names of the letters "X" and "Y", not particularly caring which one. And so on and so forth, which clearly suggest a pyramidal building up of symbols for symbols, symbols for symbols for symbols, etc. (It will be noted that we now seem to be dealing with classes, but it is not the intention to discuss at this point the calculus of classes.) The important thing is that, in this imagined situation, when one articulates the name of the letter "X", there is no doubt whatsoever that he is referring to any of the objects represented by the articulated names of the letters "A" or "B" or "C" or "D" or "E" or "F" or "G", not particularly caring which one; etc., etc.

Again, continuing to assume that all we have to deal with in the universe are physical objects, let us remove the arbitrary limit of twenty. We have already found that since the number of objects in the universe is infinite, it is impossible, or at least impractical, to give a symbol for each and every one of them. Since this is so, i.e., the objects in the universe being represented as "A v B v C... ∞", how could we now express ourselves when we want to refer to any of a number of them, not particularly caring which one? If it is arbitrarily agreed that when we say "X", we refer to "A v B v C ... ∞", not caring particularly which, could what we are referring to be understood, *without any doubt whatsoever*, when we say "X"? No. *By the very nature of things, ambiguity has crept in*

1. The impossibility of a one-to-one correspondence denies us the use of symbols for symbols that are closed, i.e., of the order of "X $\supset$ AvBvC". By force of circumstances we are constrained to use symbols for symbols that are open, i.e., of the order of "X $\supset$ AvBvC ... ∞".
   a. In fact, all our common, everyday words are of this order. We thereby skip the first level completely.
   b. But there is nothing so despairing about this. Our number system itself is of the order of "X $\supset$ AvBvC .... ∞", and we find no

"a v b v c ... ∞"; or otherwise put [which is a sharper, and therefore a more accurate way of viewing it]), of pinpointing the empirical referents of " ... ∞". One popular fashion is to call "a v b v c" the core and " ... ∞" the penumbra.

4. This approach to the symbols of law suggests a possible solution in the examination of the mythical intention (which is the essence of "O ⊃ [(a v b v c ... ∞) ⊃ X]", and is represented by the implication sign within the brackets [which does not at all mean an implication as traditionally understood — see sub-analysis, *infra*.][4] What are its characteristics?

B. *Law and Logic.**

1. *HYPOTHESIS 1.3.* The first characteristic of the mythical intention is its adherence to Aristotle's first principle — that of non-contradiction. While this may be accepted intuitively, it may

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serious problems with it because the expression "... ∞" is fixed; that is, at any stage of the series, the way of finding out the meaning of" ... ∞" is easy and definite.

2. The problem then is not impossible of solution. It is to reduce the ambiguity introduced by the expression "... ∞" to tolerate limits (i.e., within useful purposes). What are our ways of doing this?
   a. We take "AvBvC" as examples and try to find their relevant relationship that would define "... ∞".
   b. By grouping. We take two or more sets of examples and find out where a new member fits. What we do actually is to single out attributes and contrast them with non-attributes.
   c. We may directly enumerate attributes, or non-attributes, or both.
3. Using the foregoing methods, we soon find ourselves with a mass of borderline cases, and we are back where we started.

(Note from the sub-analysis.)

[4] a. Let us examine the meaning of the implication sign in "(a v b v c ... ∞) X". "X" is not a logically inexhorable consequence of "a v b v c ... ∞". The former is not part of the meaning of the latter by formal definition (except in a way, in criminal law, where a crime is defined as an act or omission punishable by law). Nor is the former, by nature, innate or inherent in the latter. Neither is a cause and effect relationship expressed.
   (1) The assumption that the implication sign in "(a v b v c ... ∞) X" expresses a cause and effect relationship impels us to look upon "... ∞" as a probability, i.e., that law is what the courts or judges will probably decide. This leads to thoroughly disappointing consequences.
   b. What the implication sign in "(a v b v c ... ∞) ⊃ X" expresses is an artificially imposed consequence. (Consider also what has already been stated — that the essence of "a v b v c ... ∞" is an anticipated future empirical fact complex.) The artificially imposed consequence is also future. Therefore, more accurately, what the implication sign in "(a v b v c ... ∞) ⊃ X" expresses is an artificially "to be imposed" consequence upon the happening of an anticipated future empirical fact complex. Otherwise put, it means "—(a v b v c ... ∞) *or else* X".

(Note from the sub-analysis.)

The symbols of law, generalized in the expression "O ⊃ [a v b v c ... ∞) X]", are therefore symbols of a hypothetical intention to bring about, under certain contingencies, certain consequences, the ultimate of which is the exertion of physical force.

* "Nature takes no account of analytical difficulties." —*Fresnel.*

be demonstrated inductively ("inductively" being used in a very loose sense [as some philosophers reject the theory of induction altogether, cf. for instance, Popper] and the word is used as more synonymous with "exemplified") through a study of (a) the rule of implied repeal of statutes, (b) the rule of implied overruling of precedents, (c) the rules of construction of statutes in case of conflicting provisions, (d) the use of *reductio ad absurdum* in disputing legal contentions,[5] (e) the use of induction (in another special sense) and deduction in deriving legal propositions, and other similar instances, all of which show an abhorrence for contradiction within a legal system.[6]

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[5] But the one definite indication that law is at least supposed to be a consistent system is its use of the *reductio ad absurdum*. This process of reasoning asserts that for a proposition to be valid, no other proposition can be derived from it which is inconsistent with some other proposition in the system. Stated conversely, if a proposition can be derived from the proposition in question, which proposition so derived is inconsistent with some other proposition in the system, then the proposition in question is not valid. The classic example of the *reductio ad absurdum* in geometry is the proof of the theorem which states that through a point, one and only one line can be drawn perpendicular to a given line or that which states that through a point, one and only one line can be drawn parallel to a given line.

Instances of the use of *reductio ad absurdum* occur frequently in judicial decisions.

(Note from the sub-analysis.)

[6] That the principle of non-contradiction is adhered to in a legal system can also be proven deductively:

A system of legal propositions is formulated to achieve order.
Contradiction without a legal system makes for chaos.
Chaos cannot achieve order.
Therefore, a system of legal propositions must adhere to the principle of non-contradiction, otherwise it will be self-defeating.

The assumed proposition here is the desire for order. This need not be assumed, however, for it can be derived from the desire for survival. As will be seen in later discussions, it is only through order that survival can be achieved.

Here is how the principle of non-contradiction is applied in legal system.

Let us say that the question for resolution in a case is whether the correct legal proposition is r or -r. One litigant will invoke the legal proposition p and contend that p r, while the other will invoke the legal proposition q and argue that q ⊃ -r. Assuming that p.q., then we say that [(p ⊃ r). -(q ⊃ -r)] V [-(p ⊃ r). (q ⊃ -r)], for it cannot be that r. -r. But suppose we find that (p ⊃ r) .(q ⊃ -r)? If p and q are statutes, then we say that one has been impliedly repealed by the other, depending on time references, or if enacted simultaneously in the same statute, that one is controlling over the other, depending on space references. If p and q are previous decisions, we say that one has been impliedly overruled by the other, depending on time references. If they are legal propositions contained in the same decision, then we say that one is the *ratio decidendi* while the other is *obiter dicta*, depending on logical references. This brings about one solution.

But suppose we find that —[p ⊃ r). (q ⊃ -r)], then we remain confronted with the original problem of (p ⊃ r) V (q ⊃ -r). So we invoke a legal proposition of a higher order than p and q, say a, and we state that [a (p ⊃ r)] V [(a ⊃ (q ⊃ -r)]. It cannot be that [a ⊃ (p ⊃ r)] .[a ⊃ (q ⊃ r)] for we do not accept that a. -a. This brings about another solution.

If, however, we find that [a ⊃ (p ⊃ r)]. [a ⊃ (q ⊃ -r)], or in other words, a ⊃ [(p ⊃ r). (q ⊃ -r], the import of a itself comes into question and this brings us back to where we started. We could, of course, continue the process until we get a satisfactory solution. If there is neither a statute nor decision that asserts a, we derive it by induction, that is to say, we assert that

2. *HYPOTHESIS 1.4.* From the foregoing follows the characteristic of unity, the idea that the correctness of legal propositions (justice) cannot be multiple, that there can be only one system of correct (just) rules. (Expressed differently, this asserts that a legal system is not a self-contradictory system in that its premises are not supposed to give rise to contradictory propositions. It does not accept that [p ⊃ q]. [p ⊃ -q]; sub-analysis, *infra.*). This may be broken down to (a) *referential unity,* unity in application, i.e., that if one rule is applied to A and another to B, they must be differently situated, for if they are similarly situated, one rule or the other must be wrong (unjust), (the concept of "equal treatment" — Hart); (Artificial concepts of classification and an unqualified mythical concept of equality are the extremes of error with respect to this.); (b) *temporal unity,* i.e., that what is correct (just) is correct (just) for all time, and if legal concepts change it is because what is supposed to be a correct formulation (of justice) is substituted for what is supposed to be a wrong (unjust) one; (These changes give an apparent characteristic of fluidity, but such is true only of the *lex lata* and not of *de lege ferenda. Lex lata* and *de lege ferenda* should be taken here to mean stages [i.e., definite points in a sequence] in the develpoment of law [which, in turn, is conceived of as a *process*], such that the terms refer to points in the process of the development of a process.); and (c) *spatial unity,* i.e., that concurrently existing legal systems differ because they differ in their premises, with the proponents of both maintaining that the other's set is wrong (unjust).

3. *HYPOTHESIS 1.5.* From the foregoing, it further follows that the mythical intention contemplates a system that is axiomatic in logical structure. (Some reject this idea due to the fear that the finding of legal propositions will become a process of purely mechanical deduction.[7] [See *infra.*, for the formal proof why this can never happen.]) This analogy, however, relates only to logical structure, i.e., in the sense of a system (in this case, of legal constructs) logically derivable from a set of premises, but not in the sense that these premises are (purely) assumed truths. (It is this

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(x ⊃ a). (y ⊃ a). (z ⊃ a) ..., where x, y, and z are statutes or decisions or both, and then we assert that, therefore, *a.*

The procedures outlined above, however, do not always result in solutions. (Note from the sub-analysis.)

[7] There is, however, a strong abhorrence to the idea that law is, or tends to be, or could be, logical (in a mathematical sense). The strongest reason for this abhorrence is subjective; it arises from ego. For its opponents say that if law were to be developed like, say, geometry, it would become static. Legislatures will become useless and judges will be reduced to calculating machines, deriving one proposition from another. In short, there will be no more need for lawyers, and to maintain the *status quo* therefore, is for them a matter of self-preservation. (Note from the sub-analysis.)

characteristic, mainly, that makes a process of purely mechanical deduction impossible[8] [See formal proof, *infra.*].)

(To be borne in mind also is the additional characteristic that the symbols of law are, of necessity and to a certain degree, open, with the concommitant danger of becoming a self-contradictory system at almost every step.)

4. The problem now is: from where, then, do the primordial premises of legal constructs arise?

C. *Law and Knowledge.**

1. *HYPOTHESIS 1.6.* Legal propositions cannot arise from the facts of a particular case. This can be demonstrated by (1) *reductio ad absurdum,* i.e., a set of facts constitute a case because they demand a decision; their decision demand a legal proposition to be applied; if the facts themselves contain the legal proposition, then they need not demand a decision, and therefore do not constitute a case; but if they do not constitute a case, they cannot contain a legal proposition; and (2) induction (again, in a very loose sense), i.e., a case is always decided on a legal proposition which covers a wider field than the facts to which it is applied; and also (3) a clearer interpretation of the induction-deduction process of deriving legal propositions (sub-analysis, *infra.*),[9] the implication of which should be limited to an indication of the axiomatic logical structure (*supra.*) of a legal system.

2. *HYPOTHESIS 1.7.* Legal propositions cannot arise from

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[8] As long as knowledge itself remains imperfect, as long as man strives to know more and more about himself and the universe he lives in, law will never become static. As long as human beings have different individualities, desires and needs, as long as one man is not a carbon copy of his fellows, law will remain dynamic. But in this movement from the search for knowledge, to knowledge, to deciding what best to apply and how best to apply it, to the applied knowledge that is law, there appears only one faculty that man can make use of. This is his ability to reason, to move from the particular to the general, and vice-versa, to conceive abstractions and to apply them to specific instances, to extend his knowledge by the movement from one proposition to the next, as well as to synthesize his knowledge in various fields. This is the one distinctive faculty of the humand mind.

It has been insisted that the life of the law has not been logic but experience. This is true. The life of law is experience, as the life of any knowledge, theoretical or applied, is experience. The life of the law is indeed experience, not in the limited sense of legal precedents, nor experience in matters of law only, but in the larger sense of the totality of all human knowledge. But in order to be able to use experience, in order to be able to ingest it, to masticate it, to digest it, and thus transform it into the vital life-giving substances usable by law in its life processes, to absorb, circulate, and finally incorporate such life-giving substances into the living cells of the law, law needs logic.

(Note from the sub-analysis.)

* "Therefore is my people led away captive, because they had not knowledge: x x x" —*Isaias.*

[9] See also footnote 6.

some mysterious source or from any innate sense of justice,[10] because then legal concepts would not change, which is contrary to historical observation.[11] (A view that what changes is only our understanding of such mysterious source or innate sense of justice will not make any difference. We will get the same results, i.e., the subsequent propositions will still follow.)

3. *HYPOTHESIS 1.8.* It can be demonstrated inductively (again, in a very loose sense) that legal concepts correspond to changes brought about by developments in man's knowledge and experience. (Some current developments in knowledge that give rise to legal problems are the developments in space travel, contraceptive pills, artificial insemination, etc. [Cf. Rosenfeld]. Farther back in history, certain treatises [syntheses of knowledge] are related causally to changes in legal concepts and systems. In fact the study of history and of law can never be divorced from each other [Cf. Friedrich].)

4. *HYPOTHESIS 1.9.* From the foregoing it follows that legal propositions arise from man's knowledge and experience. Impelled by pressure for action, they are approximations for a future course of action formulated from imperfect knowledge.

5. If this is so, then why are there different concurrently existing legal systems? Why is it that not all kowledge and experience are translated into legal propositions?

(The laws [natural laws or scientific laws] of heredity are presently so well investigated and understood that any particular strain of plants and animals can be bred almost at will. [In some current experiments, even mutation is artificially induced and accellerated.] But we would never dream of [i.e., we would dread to

[10] Of course, man does appear to have an innate sense of justice. If it is extant, little as yet is known about it and it is too vague to define. Should we accept it as coming from some mysterious source, in some mysterious way? Such an attitude, however, seems to lack favor.

> "A tree moves — how to explain it? Is the movement explained by asserting that there is a spirit or creative force within the tree, or do we explain or describe the movement in terms of the various natural elements transpiring when the tree is in the process of moving. To assume a creative force as a basis for explanation is to return to the same sort of self-actional description that has been discredited in all natural science, and soon, it is hoped, in the social sciences as well." (Hakman, Bentley.)
>
> (Note from the sub-analysis.)

[11] It will be observed that the so-called innate sense of justice changes with the times. There was a time when looting of conquered territory and enslavement of the vanquished in war was thought just. There was also a time when government interference of any kind with private contracts was thought unjust. Again, it was formerly thought just that a single person, by accident of birth, should rule a people and that he should exercise all the powers of government. Does something "innate" then change? Or if it comes from some mysterious source, does that mysterious source change? Or is it only man's understanding of them that changes? These are questions which no one can endeavor to answer without speculation. (Note from the sub-analysis.)

so advocate] incorporating this knowledge into our laws on marriage to produce better offspring. This is possibly because we consider far more weighty the value we call "love", although in the other extreme, some laws have been passed [experimentally?] providing for the sterilization of insanes and imbeciles. A more accurate reason is given *infra.*)

What is it that transmutes knowledge into law?

D. *Law and the Community Decision-Making Process.**

1. *HYPOTHESIS 1.10.* In the case of an individual, the transference from knowledge and experience to a planned course of future action (real intention) is direct; but in a society (group of men) the transference from knowledge and experience to a planned course of future action (mythical intention) has to pass through the sieve of community decision-making (which should *not* be taken to refer only to democratic processes, but to any and all kinds of legal, political, governmental, and ideological systems).[12]

But it must be realized immediately that because of the imperfect state of knowledge, there is a wide range of factors which we can neither measure nor investigate. Even an individual has to take

* Man is unique in being endowed with such a mechanism for confronting, weighing and choosing between alternatives in the light of reason and past experience." —*J. Huxley.*

[12] In order to understand the process of decision-making, one has to start with its simplest form. So in the study of choice-making, one has to imagine a single human being confronted with nothing more than his environment. In such a situation, his need for decision would arise from limited resources within himself. (Resources here is taken in the broadest sense, including time.) A single human being, for instance, can eat only a fruit at a time (having only one mouth) and so he has to decide which to eat first. Or he can either hunt or fish in the same period of time, so he has to decide which to do. It is values (in the sense of preferences with respect to values) here that comes into play. Limited data also comes in. Before values come into play, he has to approximate the true nature of things in the light of his past experience, by a process of inference, and/or by what has been called intuition. Thus he has to decide which of two fruits is less likely to be poisonous, then, the value of life coming into play, he eats the one less likely to kill him or to injure him, or he may decide to remain hungry a while longer, rather than take a risk. (It is also possible that he may choose the one more likely to kill him, if his intention is to commit suicide.)

The introduction of another human being into the picture would give rise to a variety of new factors. With two human beings, limited resources outside of themselves come into play. Thus, both of them may want to occupy the same cave, in which case one will try to persuade or bully the other into giving up his similar intention, or they might compromise and agree to share it. The other human being himself becomes a value (i.e., a factor in decision-making). One will ponder whether to kill the other and have all the food, or forbear such an idea because of the companionship or help (in hunting bigger game, for instance) that the other can give. Finding some food, one will decide whether to eat all of it, or to leave some for his companion. Since they can communicate, they can share their knowledge (i.e., past experience). The process of determining which of two fruits is less likely to be poisonous is no longer so simple when done by the two of them. They will argue about it. One may be clever enough to persuade the other, or strong enough to force him, to eat first. One or the other might, in a way, secede from the group decision and not eat at all. (Or by eating, if the group decision is not to eat.)

the latter into consideration in formulating his planned course of future action. In community decision-making, it is these diverse factors, in interaction with available knowledge, that give rise to what we call "values".

2. *HYPOTHESIS 1.11.* Every human being is a participant in community decision-making. Participation, however, may be passive or active. Passive participants are reduced to mere objects of, and/or factors in, decision-making, and they are passive (a) by inherent circumstances, (b) by force, and (c) by choice. Among the first are dead men who during their lifetime were passive participants, incompetents by nature, and unborn generations; among the second are minorities and incompetents by mandate; while all the rest belong to the third. (This classification refers only to any particular given point in time.)

There is no majority that is passive by force, but always by choice. It is difficult to conceive how a single man or a small group of men can maintain power against the wishes of a whole population for all time. (The successful revolutions in East Germany and Hungary had to be quelled by an outside force. [This is no guarantee, however, that the force can be maintained indefinitely.] There is also the exodus from unwanted communities [East Berlin, North Vietnam, Cuba, etc.] which is sometimes called "voting with the feet", and *vice versa.*)

Persuasion by propaganda is a temporary exception (but one "cannot fool all of the people all of the time." See *infra.* for the formal proof of the illusory nature of the effects of propaganda.)

A "rule by the strong over the weak" creates a referential multiplicity (hypothesis 1.4) that wrecks havoc upon any legal system because of the consequent deterioration of "moral causation" (Fried) or of the feeling of "ought" (Hart); in the case of the privileged group because the law does not apply to them, and in the case of the unprivileged group because it does.

A rule of force creates chaos which leads to extinction, thereby defeating the very purpose of law (hypothesis 2.1), or, at the very least, creates conditions where law becomes pointless, for such a system would be based upon the paradox of law arising out of lawlessness, or order out of disorder. (See also *infra.* for the formal proof of the vicious circle generated by a rule of force.)

3. *HYPOTHESIS 1.12.* Active participation in community decision-making is either direct or indirect. By force of circumstances, active participation is mostly indirect. Society must of necessity be organic (in [community decision-making] structure); but the widest possible active and direct participation in community decision-making is just the same necessary because of (a) the inhe-

rent incompetence of any one man or group of men (See also *infra.* for the formal proof of the dilemma of a rule by the elite.), (b) the imperfection of knowledge, and (c) the diversity of human values.

All of these spring from the fact that a pronouncement of (or a judgment as to) the one correct course of action presupposes omniscience. That which we call our knowledge consists only in those of our mental constructs which are disprovable to a certain degree (Cf. Popper). But the area embraced by these, though large, is not quite enough, for the area of possible but undisprovable realities (which are beyond our mental grasp because it is impossible for us to disprove [i.e., test] them — Cf. Popper) is too immense to disregard or take for granted.[13]

4. *HYPOTHESIS 1.13.* Active direct participation in community decision-making cannot be capricious. It is limited by (a) the requisite of wisdom (i.e., the most efficient use of available knowledge and weighing of values), (b) the impositions of past decisions (as guides in the use of knowledge and expression of values), (c) the burden of responsibility (of insuring survival and avoiding extinction), and (d) the consideration of future generations (as a corrolary to survival). The sanction of these limitations is the withdrawal of mandate (whether by ballot or bullet).

5. *HYPOTHESIS 1.14.* For wrong community decision-making, however, there is no sanction except that provided by nature, i.e., extinction.

6. Community decision-making in the context of the family of nations. Presently, there is no such community decision-making in this wider context. (Cf. *infra.* on the nature of international law.)

7. Assuming a perfection of the foregoing, i.e., the perfection of language, the perfect synthesis of perfect knowledge, the perfect application of logic, the perfect resolution of value conflicts in per-

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[13] In order not to be unduly diverted, we will skip the metaphysical controversy as to the nature of reality and assume the empiricist view. Likewise we will avoid the philosophical debate (of, *inter alia*, the Aristotelian Society) as to the nature of truth and adopt the Platonian, Aristotelian, Austinian correspondence theory, what the last called "the boring but satisfactory relation between words and world."

This is not, however, to exclude altogether metaphysical experience (or whatever other experience there may be), nor to reject other possible realities. *We will simply have to deal with them as unknowns.* In doing so, we avoid two extremes of error. The first is to include in our formulations only those which we can know empirically and therefore talk about sensibly, to the exclusion of other possible realities, *a view which would make our formulations incomplete.* The second is to insist on talking about unknowns (i.e., non-empirical, or metaphysical) *as if they were knowns, thereby making our formulations unintelligible or nonsensical.* There is nothing wrong with formulations which contain both known and unknown elements (our sciences contain many examples of these). The important thing is to deal with the unknowns *as unknowns.* (Note from the sub-analysis.)

fect community decision-making processes, will we then have perfect law?

Surprisingly, the answer is no, for under these conditions law itself will disappear. (See *infra.* for the formal proof.)

E. *The Paradox of De Lege Ferenda.**

1. *HYPOTHESIS 1.15.* The perfection of law therefore requires (a) the perfection of knowledge applicable to past, present, and future, (b) which, when used in a perfect community decision-making process would produce a perfect resolution of human values, (c) which would transmute perfect knowledge into perfect general legal propositions in perfect unambiguous language, and (d) which, by the perfect application of logic, would produce the perfect particular legal propositions applicable to particular cases.

2. *HYPOTHESIS 1.16.* The mythical intention which is the essence of the symbols of law would then correspond to a concensus of individual intentions (past, present, and future). The myth would then acquire a corresponding referent (*designatum*) in reality and it would then be no longer a myth.

3. *HYPOTHESIS 1.17.* But there would be no cases to decide. For the direct transference from perfect knowledge to a perfect plan of individual course of future action (individual intention) would be perfectly congruent with any collective plan of collective course of future action (real collective intention). There would therefore be no need for community decision-making. There would be no need for the threat of law (as a very loose analogue — cf. *supra.*) for there would be no intended dissenters to threaten; there would be no occasion to carry out the threat (ditto) for there would be no dissenters. (See *infra.* for the formal proof.)

At the very moment that it acquires reality, law vanishes, for the requisites for its perfection are also the requisites for its extinction.

A custom with no deviators has this characteristic of direct transference from a concensus of individual intentions to a real collective intention. (A reference to the schematic representation [*supra.*] shows that it by-passes the resolution of value conflicts *via* the community decision-making processes [middle triangle], the transmutation into legal propositions [the arrows from the apex of the middle triangle to the apex of the right triangle], and the analysis of legal propositions [right triangle]). This process is the same as the idea of "rudimentary law" (Hart), but whether we call it "rudimentary law" (which suggests a *temporal* sequence, although

* Each age has dreamed its own utopia but has failed to reach it." — *Patterson & Scholz.*

it is not strictly so for it simply refers to a condition excluding or not requiring "secondary rules" — a *logical* sequence [but which also terminates on the conception of law as "rules"], or *de lege ferenda* as herein conceived, i.e., the law's very vanishing point (which is also a *logical* sequence, and views law as a process [a sequence of empirical facts]) does not matter; the demarcation between what is law and what is not law is clear. The same is true with international law.

4. Are the symbols of law (as expressing a mythical intention which vanishes at the very point where it is no longer a myth) then nothing but myths?

F. *The Lex Lata.**

1. *HYPOTHESIS 1.18.* The resolution of this paradox is to view the intention expressed by the symbols of law (*lex lata*) as corresponding to a concensus of *prevailing* (relative to any particular given point of time) individual intentions.

2. *HYPOTHESIS 1.19.* This cannot be the rule of a minority (hypothesis 1.11). It can therefore be only the rule of the majority.

3. *HYPOTHESIS 1.20.* But a direct rule of the majority is also impossible (hypothesis 1.12). These (hypotheses 1.19 and 1.20) can only be reconciled by a congruity of the decisions of the active direct participants in the community decision-making process with that of the concensus of individual intentions of the majority (under threat of withdrawal of mandate — hypothesis 1.13). To be considered also are the minimal requisites of this congruity and their shifting characteristics. (Here comes into play the interaction between law and evolution [hypothesis 3], for it is this that causes such shifts.)

4. *HYPOTHESIS 1.21.* This congruity can only be achieved by a constant striving towards *de lege ferenda* (as already described) in (a) the formulation of legal propositions and (b) the analysis of legal propositions. It is from the opposite of congruity, i.e., incongruity, that our notions of injustice arise. Taking an "external view of the rules" (Hart), we often say, or feel, that a certain law or decision is unjust (or wrong). Feeling the incongruity, we invoke a higher law, the natural law or the moral law. But all these concepts, which we assume to be absolute, also change, both temporally and spatially (The Eskimos, it is said, consider it simple courtesy to offer one's wife to a visitor. In some South Pacific islands, a husband acquires secondary sexual rights to the sisters of his wife. More ob-

* "Law is frozen history." —*Friedrich.*

vious examples are probably monogamy and polygamy.)[14] It is much simpler to conceive that the relationship of this congruity is directly proportional (in a mathematical sense) to "moral causation", or feeling of "ought", or concept of "duty". (See formal proof *infra.*) The greater the congruence, the greater the "moral causation", feeling of "ought" or "duty", and the greater the feeling that the law is just; the lesser this congruity, the lesser the "moral causation", and feeling of "ought" or "duty", and the greater the feeling of injustice.

5. Application to specific legal problems.

Values are essentially comparative in nature, that is to say, they can be measured only as against each other in specific instances. There is no absolute value against which they can be measured relatively in a whole spacio-temporal context and by their very nature they are immeasurable (for who can measure the unknowns and unknowables, and how?). Value-choice loaded rules do not manifest their nature as such in their linguistic formulation, such that their value-choice loads may shift relative to each other without any manifestation in the rules. Hence we intuitively sense a wraping, as it were, of the rules and we are perplexed in our efforts to adhere to the principle of non-contradiction. For instance, our regard for lawfulness (i.e., abhorrence for lawlessness, or disobedience to, or disregard of, law) transcends our regard for the sanctity of contracts, so we declared as null contracts entered into in violation of the law. But where the property rights involved are considerable and the law violated comparatively trivial, the relative positions of the relevant values may shift and we are torn between our desire to adhere to the principle of non-contradiction and our dislike for a decision which we (somehow) feel unjust. Actually, if the shifting of the value-choice loads is recognized, it will be seen that the principle of non-contradiction is not violated at all.[15]

[14] As was already said, a view that there are such absolutes, but it is only our understanding of them that changes is perfectly compatible herein. It is immaterial, logically, in these discussions (i.e., it makes no difference one way or the other).

[15] We do implicitly invoke value choices to delineate our legal propositions. There are two ways of doing this. We either infer value choices or we impose them. The imposition of value choices is sometimes disastrous. Firstly, the value choice imposed may be at war with the value choice which gave rise to the legal propositions in the system and therefore will only give rise to contradictions, thereby increasing, instead of reducing, contradictions and ambiguities. Secondly, even if the imposed value choice will eventually prevail in the system of legal propositions, there is the danger that it will work towards the non-congruence of the mythical intention and the concensus of prevailing individual intentions, thereby increasing instability in the legal system. It is safer therefore that value choices be inferred from the system of legal propositions.

In inferring value choices from the system of legal propositions, there are two pitfalls. First, the value choice implied by the system of legal propositions may no longer be the value choice of the concensus of the prevailing individual intentions, thereby working towards instability. In which case, the legal pro-

Similarly, value choices are based on knowledge (experience), and at the time a case is decided, the state of knowledge (experience) which was the basis of the value choices implicit in the rules to be applied may have already changed, but the corresponding shift in the value choices might not have had sufficient time yet to be expressed through the processes of community decision-making. This places the judge in a quandary, for he either violates the principle of non-contradiction (or so he thinks) and arrives at a satisfactory decision, or adheres to it (or so he thinks) and arrives at an absurd one. In such instance, a recognition of the shift and the corresponding interpretation of the rules in harmony therewith would work towards the congruity mentioned in hypothesis 1.20.

The same is true with the problem of *stare decisis*. If precedents are investigated in the proper context of the law as a process (as described *supra*.) and the shifting of knowledge and values recognized, there would be no dilemma of following the precedent to the extent of absurdity. There is no violation of the principle of non-contradiction (and also of *stare decisis*) if the precedent is modified in accordance with such shifts (in knowledge, experience, and values).

It may also happen that the direct participants in community decision-making processes are forcibly installed and the rest of the population temporarily coerced into passivity. There would therefore be an absolute incongruity between the decisions made and prescribed and the concensus of individual intentions. Our view of law as the prescriptions of authority compel us to recognize such decisions as law, and that they be obeyed and continued to be recognized as such even after such direct participants are deposed. But implicit in this rule is our regard for lawfulness (i.e., abhorrence for lawlessness, or disobedience to, or disregard of, law, *supra*.), which in this particular instance comes into direct clash with our regard for justice (or abhorrence for injustice, defined *supra*, as an incongruity). In specific instances where the latter value overrides the former, again, a recognition of the shifting of the value-choice loads and the modification of the rule in accordance therewith does not violate the principle of non-contradiction. (Such, for instance was the situation in the post-war trials of those who denounced underground workers during the period of Nazi occupation in Europe. The defendants claimed that their acts were not

positions derived will eventually be overruled by subsequent cases and/or repealed by statute. Otherwise, there will be a withdrawal of mandate until repeal or overruling is effected, thereby restoring the stable condition. Second, the knowledge that impelled the value choice inferred may have already been found to be erroneous, thereby working towards incorrectness. Eventually, therefore, the value choice will be changed.

(Note from the sub-analysis.)

unlawful at the time of commission and that it was even required by law. Here, where the value of the regard for lawfulness clashes not only with the value of the notion of justice but also, commulatively, with the values of life and liberty, the result that their plea would be denied is obvious. But a converse result could easily be conceived of. For instance, if prior and after occupation the rule was to drive on the left side of the road, but during the occupation the rule imposed was to drive on the right side of the road, and if after occupation, one who, during the occupation, drove on the right side of the road is prosecuted for violating traffic rules, and if he argues that at the time he drove on the right side of the road it was not prohibited by law but was in fact required by it, certainly, his plea would be accepted.)

These processes constitute part of what is referred to in hypothesis 1.21 as the "constant striving towards *de lege ferenda.*"

6. The law then is a process (as already described *supra.*), and as such is a sociological phenomenon. Law as a process should not be confused with the symbols of law, and the symbols of law should not be taken as the law itself, for the symbols of law are only the tools in the process. Neither should the effects of this process and those of its symbols ("moral causation" or the feeling of "ought" or "duty" — *supra.*) be taken as the law itself. Such effects are phenomena in themselves, psychological in the case of an individual and sociological in the case of a group (of individuals).

It is the recognition of this process as a social phenomenon and the study of the natural laws (i.e., laws of nature) governing it that will solve the puzzling problems of law (See *infra.*) From the investigation of these natural laws (ditto) it will be seen that the concensus of prevailing individual intentions and the mythical intention will always seek each other as if by some magnetic force until they achieve that congruity which makes for stability. All other stages (stages of development) in the process are unstable, such that by whatever means (whether peaceful, violent, crafty, or any other) such stability will eventually be achieved by all systems extant, for the systems that do not achieve it will have died out. This means that systems which maintain wide and continued (long lasting) incongruity become unstable to the point of explosiveness. It means also that all legal systems, no matter how divergent, tend to become more and more similar as they move towards *de lege ferenda* — which of course will never be reached.

7. But in the course of this process, not only the *lex lata* shall have changed, but man also. For the relationship between

the mythical intention and the concensus of individual intentions in their progress towards congruity is mutual; it is an interaction — they alter each other.

II. PART II (*HYPOTHESIS 2*).

A. *The Persistence of Evolution.*

1. A brief review of the principal ideas of evolutionary doctrine, particularly those relating to domesticated plants and animals, i.e. survival under artificially imposed conditions.

2. The evolution of man did not cease with physical characteristics but persists in what is now called psycho-social evolution (Huxley, Teilhard). Greatly accelerated by communication, education, families, etc., evolution continues to mould behavior, attitudes, etc. (Moore).

B. *Law as a Means for Survival.*

1. *HYPOTHESIS 2.1.* With the tremendous increase in the numbers of man he has to resort to more and more complex organization if he is to survive, for chaos can only lead to self-extinction Law was formulated as a means of achieving order, and therefore as a *means* of survival.

2. *HYPOTHESIS 2.2.* But for law to achieve this end, .i.e, to bring about order and thereby be an effective means of survival, it has to impose itself by threat and force. Dissenters to it have to be discouraged, repressed, and if necessary, physically exterminated.

3. What are the effects of this nature of law upon the evolutionary process?

C. *Law as a Condition of Survival.*

1. *HYPOTHESIS 2.3.* Law is a *condition* of survival. It imposes artificial conditions, and those who do not conform find themselves under circumstances designed towards their extinction and therefore die out; those who conform are afforded conditions favorable for their survival and therefore survive. Law therefore is a very potent force in the evolutionary process.

2. *HYPOTHESIS 3.* In counter-action, law is shaped and moulded by value choices expressed through community decision-making processes and the assimilation of which is vital for the survival of the legal system itself (*supra.*). There is, therefore, an interaction.

[D. *A Particular Application.**

1. The Philippines has been under colonial rule for three and a half centuries. What characteristics were best suited for survival under those conditions?

2. *HYPOTHESIS 2.01.* Those who did not adjust to those conditions died out. Those who developed the required characteristics to a keen degree survived, and those are the types which are predominant (i.e., majority) today.

3. *HYPOTHESIS 2.02.* These types are unsuited to present conditions. They are even undesirable and detrimental to our existence and survival as a nation.

A long persisting referential multiplicity (*supra*) (i.e., conquerors and conquered, colonizers and natives) naturally resulted in (1) a constant straining towards the privileged group (by mimicry, artificial relationships, etc.), and (2) a very weak "moral causation" (Fried) or feeling of "ought" (Hart). The momentum of this condition is very strong and is particularly marked in our community decision-making processes (i.e., the "ins and the outs", "what are we in power for", etc.).[16]

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* "We commune with the thoughts of great thinkers of all ages, increase our stock of knowledge, and gradually eradicate the evils of ignorance and superstition, which hamper our progress as a nation." —*R. Palma.*

[16] It has been noticed by many, among them our own great thinkers, that our people suffer from what may be called certain undesirable national attitudes, national because although they may differ in degree regionally, they are more or less widespread throughout the nation. These have yet to be investigated, thoroughly studied, dealt with scientifically. Among them may be mentioned the distaste for hard and honest work, the desire to obtain things the easy way, the delight for getting away with something either through cleverness or influence, the tendency towards relaxation and disregard of rules when it comes to friends and relatives, the addiction to lavish and ostentatious spending, the despising attitude towards farmers and farming, the love for foreign goods, the idealization of idleness, the irresponsibility of administrators, and so on. Children of parents with means are never allowed to lift a finger and they have maids aplenty. Fathers tell their sons, "Go to school, my son, so you will not be a farmer or laborer like me." Little if at all is known about these attitudes, for the reason that they have only been covered up, laughed off, rationalized, or met with a "not-me" attitude. Yet if investigated they would probably reflect their connection with our most pressing problems such as unemployment (because everybody wants white-collar jobs), the vast (undeveloped agricultural lands (despite lavish government assistance to settlers), the mushrooming of diploma mills (because most people see a diploma as the key to a job with high salary and little or no work), government employees who only sign payrolls, the "padrino system", teenage delinquency (because they can think of nothing better to do), unstable economy (because nobody wants to work at production but only at grabbing that which is already produced), and so on. If there is a sincere effort to find out the cause of such undesirable national attitudes, *they would most probably reveal themselves as the impact of our history, the outgrowths of centuries of colonial status and conditions,* passed on generation to generation. Now that we are no longer a colony and are now an independent nation, what efforts have been made to root out these causes and to find out the methods and techniques for their eradication, if not in the present generation, at least in the next?

(Note from the sub-analysis.)

4. How can we re-direct the course of our own evolution?]

SOME RUDIMENTARY FORMULATIONS ON LEGAL SYSTEMS

I. *The Perfect Law.*

Let us assume that knowledge (K) is perfect. From this perfect knowledge would arise the perfect plan of course of action (I), thus:

$$K \longrightarrow I$$

Let us assume further that all individuals are perfect, in that they all have perfect knowledge (K_1, K_2, K_3, ... K_n). From their knowledge would arise their individual plans of course of action, or intended behavior (I_1, I_2, I_3, ... I_n), thus:

$$\begin{aligned} K_1 &\longrightarrow I_1 \\ K_2 &\longrightarrow I_2 \\ K_3 &\longrightarrow I_3 \\ \cdot &\quad \cdot \\ \cdot &\quad \cdot \\ \cdot &\quad \cdot \\ K_n &\longrightarrow I_n \end{aligned}$$

We note the congruities ($\equiv$):

$$\begin{array}{lllllll} K \equiv K_1, & K \equiv K_2, & K \equiv K_3, \ldots & \equiv K & \equiv K_n \\ \therefore I \equiv I_1 & I \equiv I_2, & I \equiv I_3, \ldots & \equiv I & \equiv I_n \end{array}$$

If we put the individual intended behavior through community decision-making processes (Cp), we can say that the concensus (C) will give rise to legal propositions (Lp), thus:

$$(I_1, I_2, I_3, \ldots I_n)\,(CP) \longrightarrow C \longrightarrow Lp$$

We can then express the legal propositions into the symbols of law (Ls), and then analyze them in order to arrive at the prescribed individual behavior (Ip), thus:

$$Lp \longrightarrow Ls \longrightarrow Ip$$

We now have:

$$(I_1, I_2, I_3, \ldots I_n)(Cp) \longrightarrow C \longrightarrow Lp \longrightarrow Ls \longrightarrow Ip$$

Since $I \equiv I_1$, $I \equiv I_2$, $I \equiv I_3, \ldots I \equiv I_n$

$$\begin{aligned} \therefore I_1 &\equiv I_2, I_1 \equiv I_3, \ldots I_1 \equiv I_n \\ I_2 &\equiv I_1, I_2 \equiv I_3, \ldots I_2 \equiv I_n, \text{ and} \\ I_3 &\equiv I_1, I_3 \equiv I_2, \ldots I_3 \equiv I_n. \end{aligned}$$

Since the community decision-making processes are perfect, that means that in $(I_1, I_2, I_3, \ldots I_n)\,(Cp) \longrightarrow C$

$$C \equiv I_1, C \equiv I_2, C \equiv I_3, \ldots C \equiv I_n$$

Likewise, since all the other process are perfect, then in

$$C \rightarrow Lp \rightarrow Ls \rightarrow Ip$$
$$C \equiv Lp \equiv Ls \equiv Ip$$
$$\therefore C \equiv Ip$$

And since $C \equiv I_1$, $C \equiv I_2$, $C \equiv I_3$, ... $C \equiv I_n$

Therefore:

$$Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3,\ \ldots\ Ip \equiv I_n$$

Which is to say that the prescribed behavior is precisely the intended behavior in the first place. As the intermediate processes are useless, they can be dispensed with, and it is thus that law vanishes at the very point *de lege ferenda* is reached.

II. *Two Characteristics of a Legal System.*

1. In the foregoing, we have noted that:

$$Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3,\ \ldots\ Ip \equiv I_n$$

Since it is dissent that gives instability to a legal system, we can say that this condition is stable, i.e.:

$$(Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3,\ \ldots\ Ip \equiv I_n) \supset S$$

and

$$(Ip \not\equiv I_1,\ Ip \not\equiv I_2,\ Ip \not\equiv I_3,\ \ldots\ Ip \not\equiv I_n) \supset S$$

Assigning arbitrarily the value 1 to perfect congruity, we can define stability as:

$$S \equiv [\Sigma(Ip \not\equiv I_1,\ Ip \not\equiv I_2,\ Ip \not\equiv I_3,\ \ldots\ Ip \not\equiv I_n) = 0]$$

Or conversely:

$$S \equiv [\Sigma(Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3,\ \ldots\ Ip \equiv I_n) = 1]$$

Using the same values, we can define the opposite of stability, i.e., instability. Thus:

$$-S \equiv [\Sigma(Ip \not\equiv I_1,\ Ip \not\equiv I_2,\ Ip \not\equiv I_3,\ \ldots\ Ip \not\equiv I_n) = 1]$$

Or conversely:

$$-S \equiv [\Sigma(Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3,\ \ldots\ Ip \equiv I_n) = 0]$$

2. Likewise, in the discussion of the perfect legal system, we have noted that:

$$I \equiv I_1,\ I \equiv I_2,\ I \equiv I_3,\ \ldots\ I \equiv I_n$$
$$\therefore I \equiv Ip$$

Let us call this characteristic of correctness, or the perfection of the planned course of action (P), which we can define as:

$$P \equiv [(Ip \not\equiv I) = 0]$$

Again, we will arbitrarily assign the value 1 to the incongruity producting the opposite of correctness, i.e., wrongness. Thus:

$$-P \equiv [(Ip \not\equiv I) = 1]$$

III. *The Imperfections of a Legal System.*

1. Knowledge, of course is never perfect. Our actions are determined by what is known and our approximations of the possibilities in what is unknown and unknowable (UK). It is impossible of course that:

$$UK \longrightarrow I$$

that is to say:

$$-(UK \longrightarrow I)$$

but there can at least be theoretically a best approximation (Ib), such that we can say:

$$UK \longrightarrow Ib$$

2. Individuals, likewise, are not perfect. No one can honestly claim that he possesses the totality of all human knowledge and experience, such that:

$$UK > UK_1,\ UK > UK_2,\ UK > UK_3,\ \ldots\ UK > UK_n$$
$$\therefore Ib > I_1,\ Ib > I_2,\ Ib > I_3,\ \ldots\ Ib > I_n$$

(> should be taken here to mean "better than".)

3. In all the processes:

$$(I_1, I_2, I_3, \ldots I_n)\ (Cp) \longrightarrow C \longrightarrow Lp \longrightarrow Ls \longrightarrow Ip$$

there are imperfections, such that:

$$C \not\equiv I_1,\ C \not\equiv I_2,\ C \not\equiv I_3,\ \ldots\ C \not\equiv I_n$$
$$C \not\equiv Lp,\ Lp \not\equiv Ls,\ Ls \not\equiv Ip$$

IV. *The Totality of Imperfections.*

1. *Instability.* The instability of any legal system is therefore:

$$\Sigma\ (Ip \not\equiv I_1,\ Ip \not\equiv I_2,\ Ip \not\equiv I_3,\ \ldots\ Ip \not\equiv I_n)\ ] =$$
$$\Sigma\{[\Sigma(C \not\equiv I_1,\ C \not\equiv I_2,\ C \not\equiv I_3,\ \ldots\ C \not\equiv I_n),$$
$$[C \not\equiv Lp],\ [Lp \not\equiv Ls],\ [Ls \not\equiv Ip]\ )\} =$$
$$\Sigma\{[\Sigma(C \not\equiv I_1,\ C \not\equiv I_2,\ C \not\equiv I_3,\ \ldots\ C \not\equiv I_n)\ ],$$
$$[\Sigma(C \not\equiv Lp, \not\equiv Ls \not\equiv Ip)]\}$$

2. *Incorrectness.* Since we have said that $-(UK \longrightarrow I)$, but that in view of the imperfection of knowledge $UK \longrightarrow Ib$, let us redefine correctness as:

$$P_1 \equiv [(Ip \not\equiv Ib) = O]$$

The incorrectness of any legal system is therefore:

$$(Ip \not\equiv Ib) \not\equiv \Sigma\{[\Sigma(Ib \not\equiv I_1,\ Ib \not\equiv I_2,\ Ib \not\equiv I_3,\ \ldots Ib \not\equiv I_n]$$
$$Ib \not\equiv I_n]\},$$

$$[\Sigma(C \neq I_1\ C \neq I_2, C \quad I_3, \ldots C \neq I_n)\ ],$$

$$[\Sigma(C \neq Lp, Lp \neq Ls, Ls \neq \quad Ip)\ ]\ \}$$

3. *The ideal condition.* The ideal condition within the realm of possibility is therefore:

$$Ib \equiv [\Sigma(I_1, I_2, I_3, \ldots I_n)] \equiv Ip$$

that is to say, one which is both stable and correct.

V. *Static Rigidity.*

Assume that at a certain point in time T_1, the process:

$$(I_1\ I_2, I_3, \ldots I_n)\ (Cp) \longrightarrow C \rightarrow Lp \longrightarrow Ls \longrightarrow Ip$$

becomes perfect, such that:

$$Ip \equiv I_1, Ip \equiv I_2, Ip \equiv I_3, \ldots Ip \equiv I_n$$

and also:

$$Ip \equiv Ib$$

Can we then fix Lp, express them in perfect symbols, Ls, such that by the use of perfect logic we would always arrive at Ip correctly? The determination of Ip then would be a process of purely mechanical deduction.

$$U > K$$
$$U \rightarrow K$$

that is to say, the unknowns are greater than the knowns and there is a constant flow from the unknowns to the knowns. Such that at a later point in time, T_2:

$$T_1\ UK \neq T_2\ UK$$
$$T_1\ UK_1 \neq T_2\ UK_1\ T_1\ UK_2 \neq T_2UK_2,\ T_1UK_3 \neq T_2UK_3, \ldots$$
$$T_1UK_n \qquad T_2UK_n$$

Since:

$$UK \longrightarrow Ib$$
$$\therefore\ T_1\ Lb \neq T_2\ Ib$$

and since:

$$UK_1 \rightarrow I_1,\ UK_2 \rightarrow I_2,\ UK_3 \rightarrow I_3, \ldots UK_n \rightarrow I_n$$
$$\therefore\ T_1I_1 \neq T_2I_1,\ T_1I_2 \neq T_2I_2,\ T_1I_3 \neq T_2I_3, \ldots T_1\ I_n \neq T_2\ I_n$$

But we have fixed Lp, Ls, and Ip, such that at the later point in time, T_2:

$$T_2I_1 \neq Ip,\ T_2I_2 \neq Ip,\ T_2I_3 \neq Ip, \ldots T_2\ I_m \neq Ip$$

and therefore:

$$T_2\ Ib \neq Ip$$

At the later point in time T_2, the system has become both unstable and incorrect.

VI. *The Dilemma of a Rule by the Elite.*

Can we not reduce the imperfections by ommiting the processes:

$(I_1, I_2, I_3, \ldots I_n)$ (CP) $\rightarrow$ Lp $\rightarrow$ Ls $\rightarrow$ Ip

and simply say Ip?

Let us assume that an individual or group of individuals have UK and therefore, with respect to them UK $\rightarrow$ Ib, and they can say Ip, such that Ip $\equiv$ Ib. This likewise presupposes that Ib $\not\equiv$ I_1, Ib $\not\equiv$ I_2, Ib $\not\equiv$ I_2, Ib $\not\equiv$ I_3, ... Ib $\not\equiv$ I_n, for if it were otherwise, there would be no need for such individual or group of individuals. Since Ip $\equiv$ Ib, therefore:

$$Ip \not\equiv I_1,\ Ip \not\equiv I_2\ \ Ip \not\equiv I_3, \ldots Ip \not\equiv I_n$$

and since:

$$(Ip \not\equiv I_1,\ Ip \not\equiv I_2,\ Ip \not\equiv I_3, \ldots Ip \not\equiv I_n) \equiv -S$$

the system is unstable.

If we wish to make the stable, then we should prescribe Ip such that:

$$Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3, \ldots Ip \equiv I_n$$

But the system presupposes that:

$$Ib \not\equiv I_1\ Ib \not\equiv I_2,\ Ib \not\equiv I_3, \ldots Ib \not\equiv I_n$$

Therefore:

$$(Ip \not\equiv Ib) \equiv -P_1$$

and the system is incorrect.

Therefore, a rule by the elite is either correct and unstable or stable and incorrect.

VII. *Consideration of Other Factors.* If we satisfy Ip $\equiv$ I_1, Ip $\equiv$ I_2, Ip $\equiv$ I_3, ... Ip $\equiv$ I_n, there is no remedy for the incongruity Ib Ip, for no other factors can be introduced into the relationship. That is to say that if Ib $\not\equiv$ Ip, we cannot achieve Ib $\equiv$ Ip by saying (Ip + x) $\equiv$ Ib, for there is no such factor.

But how about in the case of Ip $\not\equiv$ I_1, Ip $\not\equiv$ I_2, Ip $\not\equiv$ I_3, ... Ip $\not\equiv$ I_n, can we not satisfy Ip $\equiv$ Ib, and then say: $(I_1 + x) \equiv Ip$, $(I_2 + x) \equiv Ip$, $(I_3 + x) \equiv Ip$, ...

$(I_n + x) \equiv Ip$?

1. *Moral causation.* "Moral causation", feeling of "ought", or concept of "duty" (D) means that one does something because he thinks it is "the right thing to do" (Fried). Therefore it arises from UK, or in individual cases, from UK_1, UK_2, UK_3, ... UK_n. That is to say:

$$UK_1 \rightarrow D_1,\ UK_2 \rightarrow D_2,\ UK_3 \rightarrow D_3, \ldots UK_n \rightarrow D_n$$

Which is the very same manner that:

$$UK_1 \gg I_1,\ UK_2 \gg I_2,\ UK_3 \gg I_3, \ldots UK_m \gg I_m$$

Therefore, $D_1, D_2, D_3, \ldots D$ are identical with $I_1, I_2, I_3, \ldots I_m$, or at least, their values with respect to the processes under discussion are one and same, such that:

$$[\Sigma(I_1 \not\equiv Ip,\ I_2 \not\equiv Ip,\ I_3 \not\equiv Ip, \ldots In \not\equiv Ip)\ ] =$$
$$[\Sigma(D_1 \not\equiv Ip,\ D_2 \not\equiv Ip,\ D_3 \not\equiv Ip, \ldots D_m \not\equiv Ip)\ ]$$

Therefore:

$$\Sigma(I_1 \not\equiv Ip,\ I_2 \not\equiv Ip,\ I_3 \not\equiv Ip, \ldots In \not\equiv Ip) =$$
$$\Sigma \prec [(I_1 + D_1) \not\equiv Ip],\ [(I_2 + D_2) \not\equiv Ip\ ],$$
$$[I_3 + D_3) \not\equiv Ip\ ], \ldots [(I_m + D_m) \not\equiv Ip] \succ$$

2. *Fear.* Fear (F) is generated by sanctions, i.e., threats, and the effects of the threats are in turn dependent upon the execution of the sanctions (E). The lesser the sanctions are executed, the lesser the threats, and therefore, the lesser the fear. That is to say, the lesser is E, and the lesser is F. The relationship is mutual, such that the lesser the required F, the lesser the E needed to generate it. Conversely, the greater the required F, the greater the E needed to generate it.

If one is forced to do something, it also implies that there is no D, otherwise, there is no need for F. The greater the F required, that means that the lesser is the D.

Since E is directly proportional with F, while D is inversely proportional with F, therefore E is inversely proportional with D. We have said that $D_1 \equiv I_1,\ D_2 \equiv I_2,\ D_3 \equiv I_1, \ldots D_m \equiv I_m$, so that $I_1, I_2, I_3, \ldots I_m$ are inversely proportional with E.

The maximum E is the imposition of the death penalty and let us arbitrarily assign to it the value of 1. E, therefore, can range from E = 0 to E = 1. Since E is inversely proportional to $I_1, I_2, I_3, \ldots I_m$, therefore, in the unstable condition where:

$$\Sigma(Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3, \ldots Ip \equiv I_m) = 0$$

E must be equal to 1 in order to produce stability. In this circumstance, everybody is put to death and the legal system of course becomes pointless. In the stable condition where:

$$\Sigma(Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3, \ldots Ip \equiv I_m) = 1$$

E is not necessary so, E = 0.

Perhaps a mean could be found somewhere between the values 0 and 1 where stability could be achieved without exterminating the whole population, but the trouble is that at a certain point, E generates -D, that is to say, it lessens the value of $\Sigma(Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3, \ldots Ip \equiv I_m)$, and this in turn requires an increase in the

value of E in order to effect stability, etc., etc., which vicoius circle would inevitably lead to the extermination of the whole population. Where this point is, is hard to determine, if not indeterminable, but in any event, the safer course is always towards a minimum value of E and a maximum value of $\Sigma(Ip \equiv I_1, Ip \equiv I_2, Ip \equiv I_2, \ldots Ip \equiv I_n)$.

3. *Ignorance in relation to fear.* In $UK_1, UK_2, UK_3, \ldots UK_n$, assume a minimal value of $K_1, K_2 K_3, \ldots K_n$, such that the disparities $UK \not\equiv UK_1$, $UK \not\equiv UK_2$, $UK \not\equiv UK_3$, $\ldots$ $UK \not\equiv UK_n$, are great. Assume also that the effect of his greater disparity is that, for the same value of F, a lesser amount of E is required to generate it. Will this offer any advantage?

Since we have assumed a great value for the disparities $UK \equiv UK_1$, $UK \not\equiv UK_2$, $UK \not\equiv UK_3, \ldots UK \not\equiv UK_n$, and since $UK_1 \rightarrow I_1$, $UK_2 \rightarrow I_2$, $UK_3 \rightarrow I_3, \ldots UK \rightarrow In$, the disparities $Ip \not\equiv I_1$ $Ip \not\equiv I_2$, $I \not\equiv I_3, \ldots Ip \not\equiv I_n$ will correspondingly become greater also. Since what we seek to produce is $(I_1 + F) \equiv Ip$, $(I_2 + F \equiv Ip$, $(I_3 + F) \equiv Ip, \ldots (I_n + F) \equiv Ip$, it follows that we will need a greater amount of F.

Therefore, the advantage gained by the assumed fact that it takes a lesser of value of E to produce the same amount of F is cancelled out by the fact that under the same conditions, a greater value for F is required.

On the other hand, if we assume that under conditions where the value of the disparities $UK \not\equiv UK_1$, $UK \not\equiv UK_2$, $UK \not\equiv UK_3, \ldots$ $UK \not\equiv UK_n$ are great, it will require a greater value of E to produce the same amount of F, far from an advantage being gained, a disadvantage is brought about by the condition under this assumption.

4. *Propaganda.* Propaganda pressuposes that $Ip \equiv Ib$ and that $Ip \not\equiv I_1$, $Ip \not\equiv I_2$, $Ip \not\equiv I_3, \ldots Ip \not\equiv I_n$. Propaganda seeks to achieve stability by manipulating $UK_1, UK_2, UK_3, \ldots UKn$, such that when $UK_1 \rightarrow I_1$, $UK_2 \rightarrow I_2$, $UK_3 \rightarrow, \ldots UK_n \rightarrow I_n$, $Ip \equiv I_1$, $Ip \equiv I_2$, $Ip \equiv I_3, \ldots Ip \equiv I_n$. Since:

$$Ip \equiv Ib$$

$$Ip \equiv I_1,\ Ip \equiv I_2,\ Ip \equiv I_3, \therefore Ip \equiv I_n$$

$$\therefore\ Ib \equiv I_1,\ Ib \equiv I_2\ \ Ib \equiv I^3, \ldots Ib \equiv I_n$$

But:

$$UK \rightarrow Ib$$

$$UK_1 \rightarrow I_1,\ UK_2 \rightarrow I_2,\ UK_3 \rightarrow I_3, \ldots UK_n \rightarrow I_n$$

So, since:

$$Ib \equiv I_1,\ Ib \equiv I_2,\ Ib \equiv I_3, \ldots Ib \equiv I_n$$

$$\therefore\ UK \equiv UK_1,\ UK \equiv UK_2,\ UK \equiv UK_3, \ldots UK \equiv UK_n$$

What was actually done is education, not propaganda.

If, on the other hand, what propaganda seeks to do is manipulate UK_1, UK_2, UK_3, ... UK_n, such that:

$$UK \not\equiv UK_1 \quad UK \not\equiv UK_2, UK \not\equiv UK_3, \ldots UK_n \equiv UK_n$$

Then, when $UK_1 \rightarrow I_1$, $UK_2 \rightarrow I_2$, $UK_3 \rightarrow I_3$, ... $UK \rightarrow I_n$, $Ip \equiv I_1$, $Ip \equiv I_2$, $Ip \equiv I_3$, ... $Ip \equiv I_n$ so as to produce stability, then it follows that since:

$$UK \rightarrow Ib$$
$$\therefore \quad Ip \not\equiv Ib$$

Therefore the system would be incorrect.