

TRANSATLANTIC DEBATES IN LEGAL THEORY

ASIL-ESIL Workshop
in conjunction with the Research Project *Rechtskulturen*
of the Wissenschaftskolleg zu Berlin

* *

Lauterpacht Centre for International Law
Cambridge
20-21 September 2012

LAW AND SOCIAL EVOLUTION

Post-evolutionary human involution

Philip Allott

OUTLINE OF A RELECTION

in honour of Francisco de Vitoria (c. 1483-1546)

- A. THE SCIENCE OF LAW (1-10) ó holistic law ó the science of law ó the decline of intellectual universalism.
- B. HUMAN SELF-CREATING (11-23) ó the contradictions of human self-creating ó humanity self-perfecting ó the nature of value.
- C. LAW AND THE MAKING OF THE HUMAN WORLD (24-37) ó values and law ó how does law do it? ó legal reality ó legal relations ó how do legal relations do it? ó law and the body politic ó law and the mind politic.
- D. HUMAN INVOLUTION (38-53) – the work of the human mind ó the work of social self-constituting ó three theses of human involution ó echoes and analogies.
- E. INTERNATIONAL LAW AND THE PRESENCE OF THE FUTURE (54-59) ó threats and challenges ó pathologies of the human condition ó tasks for legal philosophy.

Zusatz. THE EURAMERICAN MIND(S) (60-70) – the MAR in the Euramerican mind.

Implicit assumption ó
philosophy of International Law is an integral part of legal philosophy in general.

Implicit thesis ó
contemporary legal philosophy is fundamentally misconceived.

A. THE SCIENCE OF LAW

Holistic law

1. Law is energy, life, mind, society, and the presence of the future.
2. Law is *energy*. A particular form of the organising of human energy. Law *causes* change in the physical world and provides *reasons* for change in the human world = the mind-made world = another nature, as it were, within the realm of nature (Cicero); *imperium in imperio* (Spinoza); a world within a world (Shelley).
3. Law is *life*. Law organises in a particular way the *impulse of life* that is the form of energy that drives the unceasing process of change in all living organisms, including human beings and human societies. Law feeds on rich sources of energy.
4. Law is *mind*. Law, an ocean of *ideas* formed by the infinite creativity of the *human brain* ó the brain, an evolved species-inheritance (phylogenetic) with a unique form (ontogenetic) in each human being. Ideas ó created by the brain acting as the *human mind* ó that is, *the self-conscious activity of the brain* whose products can be shared with other minds, especially through the medium of language.
5. Law is *society*. The primary structure-system of the permanent self-constituting of society. *International law* as *the limiting case* of law ó the law of all laws ó the *reason* for change and the *cause* of change throughout the *physical world* and at every level of the *human world*.
6. Law is *the presence of the future*. The energy of the law contains, at each present moment, the potentiality of the futures that it may cause to happen ó law-making, law-applying, law-conforming behaviour, law-violating behaviour.

Law reflects and enacts humanity's unique status as a species that has acquired the capacity to make its own future ó a capacity of *self-creating through the activity of the human brain-mind*.

The science of law

7. A complete intellectual exploration of law comprises all *intellectual disciplines* relevant to the study of the *human condition* ó evolutionary biology, ethology, social biology, neurology, neuropsychology, philosophical psychology, clinical psychology, historiography of all kinds (universal, national, cultural, intellectual, scientific, social, economic), theology, philosophy of all kinds (epistemology, metaphysics, social, moral, aesthetic), economics, sociology, anthropology, linguistics, fluid dynamics, climatology, cybernetics, computer science.

8. The science of law is a *Gesamtgeistwerk*. The total mindwork of the philosophical exploration of law cannot treat law as a phenomenon isolated from its universal context. *Rechtswissenschaft* is inseparable from *Kulturwissenschaft* which is inseparable from *Geisteswissenschaft* which is inseparable from *Naturwissenschaft*.

Law science ó culture science ó mind science ó nature science.

Example 8.

Decline of intellectual universalism

9. A *universalising intellectual imperative* has been present in many cultures. In Europe, a special tradition of *intellectual universalism* ó *scientia generalis* ó stemming from ancient Greek philosophy, was revived in the 12th and 15th-century Renaissances and the 18th-century Enlightenment ó Aquinas, Alberti, Pico della Mirandola, Machiavelli, Montaigne, Erasmus, Bacon, Hobbes, Spinoza, Leibniz, Montesquieu, Diderot, Vico, Wolff, Kant, Condorcet, Hegel, Marx, Spencer.

10. In the later 19th century, *macro-intellectualism* swamped by *micro-intellectualism* ó intellectual specialisation positivism and human naturalism and

reductionism sharp decline in the idea and the practice of intellectual universalism
sharp decline in humanity's capacity of *self-understanding* and *self-perfecting*.

Example 10.

B. HUMAN SELF-CREATING

The contradictions of human self-creating

11. *Panhumanism* a correlative of intellectual universalism ó a collective consciousness of the totality and diversity of humanity dispersed across the whole planet Earth. Greece and Rome ó panhumanism, to the current limits of their knowledge. In Europe, the "Age of Discovery" (from 1492) ignited a revived spirit of panhumanism ó including revived ideas of universal law ("natural law" and "the Law of Nations" ó law of all laws).

12. Panhumanism and intellectual universalism produced two holistic questions ó what *has* humanity made of itself? ó what *could* humanity make of itself?

13. To the first question, fierce dialectic of responses. Human history, a history of human progress, of human self-enlightenment. Human history, a history of human decline. Human history, a tragic drama of the crimes and follies of mankind. Human history, meaningless chaos, sound and fury signifying nothing. Human nature, selfish and aggressive. Human nature, altruistic and sympathetic and co-operative.

Humanity, grandeur and misery. Human being, demigod and wild beast.

14. The human being as a *living organism* ó influenced by a central Aristotelian idea ó a living thing uses energy to actualise its unique potentiality (*entelechy*). We contain our future already within us as a potentiality ó our species-potentiality.

Example 14.

15. The human being *re-imagined* by Italian Renaissance *humanism*. Human beings (*pace* Aristotle) have no pre-determining form or essence. We are free to

become what we choose to become. Humanity is a potentiality of *freedom* within the *necessity* of the physical world.

16. The potentiality of a human being is not determined by being an Athenian, a Roman, a Florentine or ó drama! ó a Christian ó but by being the unique living organism known as a *human being*.

Example 16.

Italicised sentence ó *probably the most important sentence ever written.*

It contains the modern world ó and the modern world's future ó the frenzy of human *self-creating*.

The Pico Moment.

Compare: The Parmenides Moment (P.J.A, *The Health of Nations*, 1.6).

From the Parmenides Moment to the Pico Moment ó two thousand years.

The idea spread like wildfire across Renaissance and Reformation Europe ó Th. More, F. Bacon, D. Erasmus, M. Luther *et many al.*

M. Ficino (1433-99) ó Platonic Academy (Florence) ó had placed the human being at the centre of the universe ó an integral but infinitesimal part of the universe ó but able to contain the whole universe within the human mind.

G. Pico della Mirandola (1463-94) adds the idea that the human mind makes the human being into a self-creator (or, for religious people, a self-re-creator).

The public mind of Europe begins to part company with a human world ruled by the Fate, Destiny, and Will of God of mythology and religion.

Humanity self-perfecting

17. Therefore: the human condition ó *conditio humana* ó can be improved by the application of human energy. Human self-creating can be *human self-perfecting*. The

power of the human mind allows us first to imagine, and then to make, a better human world, a better humanity, a better human being.

Example 17.

18. But how can we possibly know what is *best* and, hence, what would be *better*? And how can we possibly have any idea of *the good* that can be applied to humanity collectively, socially, universally?

Central questions of religion and of social and moral philosophy.

Example 18A.

Italicised sentence – probably also the most important sentence ever written.

The idea of *the ideal* that causes human beings and human societies to *seek* for justice and the good, the true and the beautiful ó unattainable targets which, nevertheless, direct human energy towards themselves. Perhaps ó ideal self-perfecting values are the hard-wired internalising in the brain of the efficient self-ordering of the universe?!

Example 18B.

[See: PJA, "On first understanding Plato's *Republic*: 2011 *EJIL*.]

19. How can we search for justice and the good, the true and the beautiful, if we seem to be incapable of saying what they are? Can they be a matter of knowledge, a matter of teaching and learning?

In the *Meno*, Socrates causes an uneducated slave-boy to find already present in his mind (and in his capacity of articulation) some of the principles of geometry.

Example 19.

The nature of value

20. We value things. We know what is better, even if we don't know what is the best, let alone what (universally) is *the good*. Perhaps ó the search for *the nature of virtue*

(ó *virtus*) led by Socrates, Plato and Aristotle ó may better be understood as the problem of the nature of *value*?

(Amazing achievement of Greek philosophy ó universal ideas ó virtue, truth, life, energy, being, nothing, mind, atoms, the universe. *Natural science* – the mind constructing *an ideal universal order of the reality* of the natural world. *Philosophy* ó the mind thinking universally about its own nature, capacities and products.)

21. What is *value*?

Example 21.

How does the *human brain* choose one *action* ó moving an arm, uttering words (*e.g.*, a course of action with a specific moral or legal significance ó positive or negative) among what may be an infinite number of possible actions? The journey of *the brain* from *the potential* to *the actual*. Neuroscience. Neuropsychology.

[See PJA: *A Future for Human Rights?* ó via the following link
<http://www.trin.cam.ac.uk/index.php?pageid=1057>]

22. In brain-functioning, there must be *algorithms* at work in *the gap* intervening between thought and action ó *imagining* external reality and *imagining* possible effects on external reality of possible forms of action ó and ó greatest mystery of all ó algorithms causing the final choice of a particular action. Algorithms *govern* the effective application of energy (cybernetics, computer science).

(algorithm = computational problem-solving procedure)

(imagination = a creative activity of the brain)

23. Hypothesis. *Values* are algorithms acting in the functioning of the brain that help the brain to choose and execute a particular course of action.

A value-algorithm causes possible action A to be *preferred* over possible actions Bⁿ – and (by some other, equally mysterious, process in the brain) action A is

adopted by the brain as the programme of an *actual* course of action taking effect outside the brain!! ó *hydraulic* brain-system – reservoirs and valves and channels, for controlling and channelling human energy.

The *moral node*, as we might call it – the specific brain-process where *value-algorithms* are programmed, retained, and sorted to make a *possible* action *actual*.

(*node* ó a growth point at the meeting of several forces)

C. LAW AND THE MAKING OF THE HUMAN WORLD

Values and law

24. Values – algorithms of human action – may be ideal values or good values or evil values or indifferent values (contingently good or bad). Values are algorithms of *social action* as well as individual action.

Value-algorithms are generated (or recollected!) within the brain of a particular person ó *externalised* by that person's participation in the *public mind* of society, by way of sense-perception, especially *language* in the widest sense of the word ó *internalised* into a particular person's brain by the same means (in reverse).

25. Values, of all kinds, also retained in the *public mind* as algorithms of social and individual action ó religion, morality, law, politics. *Law* is an externalised (socialised) form of the internal process of brain-functioning that we have called the moral node. *Law* ó the *legal node* ó specific value-processing machine operating within the public mind and private minds, causing social and individual action.

26. (1) *Law* makes *values* socially operational ó ideal values or good values or evil values or indifferent values. (2) So law is an instrument of human self-creating. (3) Ideal values and good values are a source of the energy of human *self-perfecting*. (4) So law can be an instrument of human self-perfecting.

How does law do it? Legal reality

27. Law is a reality-making machine. Law creates a specific *legal reality*, within *general social reality* ó which is itself part of the *ideal reality* created by the human mind and the *universal reality of the physical world*. Legal reality and social reality and ideal reality and universal reality are the environmental conditions within which values are formed. The *law world* ó within the *human world* ó within the *natural world* ó an *imperium* within an *imperium* within an *imperium*.

28. Within legal reality, everything ó every person, institution, place, event ó every act and omission ó has a *legal significance* ó giving birth, dying, giving a lecture, stepping off the footpath, planting a tree, not voting, not paying a debtí Every breath we breathe, every moment of our lives, our every action and inaction has legal significance. Law is a parallel world of human existence ó a parallel world of meaning. Law is a universal language of the human (mind-made) world.

29. Law is *social poetry* ó the *logos* of society ó a store of social *potential energy* ó the *physics* of social change ó the *cybernetic governor* of social power.

Everything ÷entangled in the net of lawø (A. Pope, *Essay on Man* (1734), ep. III.)

Example 29.

How does law do it? Legal relations

30. But ó contrary to popular belief, law is *not* a set of commands, rules, norms, or principles. Law is *legal relations*. Legal reality is an infinitely complex set of artificial relations ó between and among human beings, between and among law-made legal persons ó an idea, an abstraction, a fiction ó each legal relation being created and interpreted and applied by or under other legal relations. Law is an imaginary network of potential human behaviour. The aim of law is to actualise a pre-

determined potentiality in actual human behaviour. Law is the social past acting in the social present to make the social future.

31. W. Hohfeld's eight *legal relations*. A. Kocourek's twenty-four *jural relations*.

Not important. Important is to recognise analytically such things as *right (claim)*, *power*, *freedom*, *no-right*, *duty*, *liability*, *immunity*, *disability*, whatever as the raw-material of law. All law or all legal reality is made from such things.

32. Law re-programmes value-algorithms as legal relations. Two most significant legal relations or (1) (legal) *power* or a *discretionary choice* available to the power-holder *to alter the legal situation of one or more, or millions of other people* or in other words, to change their lives or (2) (legal) *freedom* or a choice available to the freedom-holder to act or not to act, in the absence of an applicable legal relation of *duty*. The legal relations in question specify the content and the limits of the power or freedom. The *discretions* involved are a *decision-making delegation* from society, *reflecting and enacting relevant social values*.

How do legal relations do it?

33. Legal relations are the *molecular* structure of *law*. The *atomic* structure of *legal relations* is *matrix*, *heuristic*, and *algorithm*. Legal relations are ingeniously engineered to cause and control social change. Legal engineering. Precision engineering. Legal electromagnetism or each legal relation containing enough Heisenberg (Kammerhofer) *uncertainty* to match the complexities of everyday life.

Examples 33.

Law and the body politic

34. Society is a bodiless body. Law is the *anatomy* of the body politic, the continuing structure. Law is the *physiology* of the body politic, the continuing systems. Law is the *biology* of the body politic, enacting its genetic programme,

carrying its past life through its present life into its future life. Law is the *nervous system* of the body politic, organising and controlling all the functions of society.

Law and the mind politic

35. Society is a brainless mind, but a powerful and creative mind.

[PJA, "The nation as mind politic. The making of the public mind." *JILP* 1992.]

A society constitutes itself in three interacting dimensions ó ideally, legally, and really ó *Idealverfassung – Rechtsverfassung – Realverfassung*.

[PJA, *Eunomia* (1990/2001), ch. 9.]

Law as a resultant of the interacting of the forces of the *ideal* constitution (collective ideas about society itself and about everything else) and the *real* constitution (everyday life, especially economic life). Law as the product of *politics* ó the arena of a more or less organised struggle to turn self-interest into common interest.

36. Law is a *universalising* force in society. Law *universalises* the infinite particularity of human behaviour into abstract legal relations, reflecting society's universalised ideas and ideals. By means of law, the social universal is *particularised*, in the infinite particularity of everyday life, in conforming human behaviour (including the behaviour of courts and other holders of legal powers).

37. Law makes individual society-members into agents of society's common interest, agents of society's ideas and ideals. Law organises the *social exchange* – of human power into social power, of social power into human power. [*Eunomia*, ch. 10.]

A game is a perfect example of the *social exchange* at work. *Natural* human power ó kicking, striking, throwing a ball – is turned into *social* power in the context of social relations determined by the *universal* socio-legal setting (‘football’, ‘golf’ etc.) and each particular game-event is dominated by a *telos* (winning) which is a shared ideal. Democracy and war are not much different.

D. HUMAN INVOLUTION

The work of the human mind

38. From cave-dweller to test-tube baby. From poisoned dart to cyberwar. From the Vedas to Harry Potter. In the public mind, as in the private mind, the past haunts the present, consciously and unconsciously; and the present is the past of the future.

Human self-empowering, yes. Human progress, perhaps. Human self-perfecting??

A pessimist. **Example 38A.**

An optimist. **Example 38B.**

An idealist. **Example 38C.**

A meliorist. **Example 38D.**

39. The history of *four of the highest activities of the human mind* certainly seems to be evidence of the possibility of human progress ó religion, art, philosophy, natural science ó conceiving *our place in the universe*, exercising the mind's power of *creative imagination*, exploring the *mind's own nature* and capacities and products, exploring the order of the *natural world*.

40. Late 18th and early 19th century ó temptation to see *the history of the human mind* as evidence of *linear* human progress ó from the *religious* to the *metaphysical* to the *scientific* (Condorcet, Comte) ó the future in the hands of scientific rationalism.

41. Also in the 19th century, the *historicist* temptation ó newly sophisticated historiography encouraged the detecting of patterns, or even *laws*, in human history.

Geology and evolutionary biology fed the idea of a meaningful linear timeline of historical development. *Progress* an obsessive idea of the 19th century ó fed by the amazing achievements of the natural sciences and of industrial technology ó together with revolutionary and sub-revolutionary social progress in certain advanced societies ó seemed to prove finally the possibility of unlimited rationally-directed human progress.

∴ as natural selection works solely by and for the good of each being, all corporeal and mental endowments will tend to progress towards perfection.∅
(C. Darwin, *Origin of Species* (1859), ch. 14.)

Example 41.

42. After the disasters and chaos of the 20th century, not much belief now in historical inevitability or the predictability of the human future ∅ not much belief in natural human progress or human self-perfecting.

Dystopians and miserabilists of the world, unite! You have nothing much to lose.

Example 42.

The work of social self-constituting

43. ∅A second possible demonstration of human progress ∅ *social forms* ∅ humanity's amazing creativity in forms of social self-constituting, over the course of four or five millennia.

∴The variety of Bodies Politique is almost infinite.∅
Th. Hobbes, *Leviathan* (1651), bk. II, ch. xxii.

Example 43.

44. The flora and fauna of the human (mind-made) world. All made by the human brain-mind ∅ through *language* (social communication) and *law* (social self-ordering). The ceaseless social self-constituting of the human species.

Three theses of human involution

45. *First asserted thesis.* Human mind. There is a detectable pattern in the history of the human mind ∅ a paradoxical pattern ∅ the permanent presence of past states of the human mind ∅ a timelessness-through-time.

46. The intense activity of the human mind in religion, art, philosophy, natural science has been a continuous process over the course of recorded human history.

But it is a process of ever-increasing *organic complexity*, not merely a process of *change* (where one state of the process simply negates and replaces a previous state). *Past states* of the human mind are permanently present, with a permanent potentiality of acting within *present mental activity*.

Example 46.

47. *Second asserted thesis.* Human society. There is a detectable pattern in *the history of human social self-constituting* ó a paradoxical pattern ó *the permanent presence of past forms of social self-constituting* ó a timelessness-through-time.

48. All the social forms listed in **Example 43** rise and fall and rise in prominence at different times and in different places. Each is a variation of social complexity. But ó remarkable fact ó they all *co-exist* at the present day ó in different countries across the world ó and even *within* particular societies.

49. Advanced democracies contain vigorously interacting versions of every one of the twenty social forms. In Britain ó tribalism, feudalism (including slavery), republicanism, urbanism etc., etc. ó each of them re-forming itself from day to day. Social forms are constantly forming and re-forming themselves ó changing shape ó mutating ó like Protean amoebae and bacteria.

50. *Third asserted thesis.* Human history is not a history of linear human progress or linear self-perfecting. Nor is it a process of evolution into a new and higher species. It is a process of *involution* ó continuous *human self-creating through increasing complexity* ó cumulative self-adapting of the species, struggling to survive and prosper in its two habitats ó the natural world and the human world which is created, and endlessly re-created, by the human brain-mind.

51. The human species has freed itself from Evolution by Natural Selection. Evolution by Natural Selection is humanity's pre-history. The human world, humanity's second habitat, moves further and further away from its natural origins and becomes ever more artificially complex, its complexity feeding on its complexity.

52. Someday we may find that we are no longer able to *master* our own complexity and the human species will destroy itself. Or, gradually, we may *undo* our essential species-characteristics and especially the limitless, but abused and underused, potentiality of the *human mind*. Or some new natural catastrophe, like those that made us the species that we are, will return us to the patient embrace of species-ruling Evolution. Evolution by Natural Selection resumes its hegemony. *The Time Machine* (H.G. Wells, 1895). *The Machine Stops* (E.M. Forster, 1909/28).

53. In the meantime and *involution* not evolution. Continuous adapting to our two habitats through self-re-ordering in ever-increasing complexity. *Education* is the main instrument of the involution of the human being. *Law* is the main instrument of the involution of human society. *Language* is the main medium of education and law.

[*Echoes and analogies*

54. These three, seemingly exotic, asserted theses actually evoke countless analogies and echoes from past thinking. **Examples 54.**]

E. INTERNATIONAL LAW AND THE PRESENCE OF THE FUTURE

Threats and challenges

55. So-called globalisation is a coming-to-consciousness of human involution at the level of all-humanity, of the whole human species. International Law acts as a primary instrument of human involution at the global level, as it does at all other social levels.

The universalising of the Pico Moment (para. 16 above) But religion remains in vigorous dialectical opposition to the humanist order leading to many of today's problems, not least the Middle East.

56. The global involuted human condition that we have inherited in the 21st century is full of threats and challenges new and old, but unprecedented in their scale and their potency and their mind-numbing complexity.

20th-century arrivals

1. Thirty Years Civil War in Europe (1914-45).
2. Fundamental revolutions ó especially Russia and China
(EU = half-revolution, at most ó see PJA, *Health of Nations*, ch. 7).
3. End of imperialism. Proliferation of new states.
4. Ideological hegemonies. Cold War.
5. Massive intensification of international economic phenomena.
6. Massive development of international law and government ó
compare: late-19th-century national response to industrial capitalism.
7. Emerging new constitutionalism of international society.

19th-century survivals

8. War. Intervention. Diplomacy.
9. Great power rivalry.
10. Nationalism, sub-nationalism.
11. Transnational religions.
12. New imperialism (political, economic, military).
13. Gross political instability within states.
14. Gross social inequality, within and among states.

Pathologies of the human condition

57. Some people see an ultimate threat or challenge to the human-made human condition in the massive increase in law and government over the last two centuries, as by-product of industrial capitalism and its attendant bureaucracy.

Not only the well-known dystopias (Huxley, Orwell, Forster, *apekí*), but also Weber, Marcuse, and countless other culture-critics (following the great 19th-century culture-critics ó Marx, Engels, Arnold, Ruskin, Tolstoy, Nietzscheí).

Human self-surpassing or apocalypse soon? Two troubling prognoses.

Social absolutism. Stage I. Dehumanising. The *individuality* of the human being in terminal peril at the hands of totalitarian society. The totalitarian subjection of the human being by ever more powerful and efficient social forms.

The paradox of democracy. The more we are politically free, the more we are socially subject. Self-government as collective government. *The paradox of freedom.* Social absolutism. The socialising of the rational and the transcendental. *Value* absolutely and finally determined by society.

No ÷outsideø and ÷beyondø in dialectical opposition to the ÷insideø and ÷withinø. Humanity as Don Quixote ó helpless victim of its own fantasies. Humanity as Candide ó resigned spectator of its own evil.

A crucial challenge for *law* ó as the main instrument of social self-ordering.

÷By what inconceivable art has a means been found of making men free by making them subject?... These wonders are the work of law.ø J-J.Rousseau, *Discourse on Political Economy* (1755).

Social absolutism. Stage II. Ultimate populist democracy. The disappearing ÷peopleø. Human individuals finally reconciled to their social status, with no other basis of their existence. Other-government becomes the ultimate in self-government. Class struggle and social subjection wither away in total social

participation, the merging of the people with society ó government and governed coalesce psychically ó them and usø becomes usøó the private mind fused into the public mind. Not J.S. Millø *tyranny of the majority* but *the tyranny of all by all*.

Examples 57.

58. Over the last four millennia, *national law* has been a central feature of revolutionary social transformation, responding to *external* challenges (A. Toynbee) ó ancient Iraq, Hellenic Greece, republican and imperial Rome, the Roman Church, Byzantium, post-medieval European nation-making, the New World, the Protestant Reformation, American independence, the French revolution, 19th-century imperialism, transnational competition of industrial capitalism, world wars.

International law responds to the *internal* challenges of international society.

Tasks for legal philosophy

59. (1) The structures and systems of a *new universal constitutionalism* ó but not mere apathetic extrapolation from existing national structures and systems.

(2) The *legitimizing* of the new constitutionalism ó a new universal philosophy for a new human condition, a new stage of human involution.

60. The *ideal self-constituting* of a universal social form, a new epoch in the history of human involution.

An interesting challenge for the total mindwork of the science of law.

Zusatz. THE EURAMERICAN MIND(S)

61. All the above is an acute challenge for the Euramerican mind, which is the source of very many of the social forms that are taking root across the world, nationally and internationally.

But, a complicating obstacle ó an anomalous phenomenon of *mental geology*.

The MAR in the Euramerican mind

62. The Mid-Atlantic Ridge (MAR) is a north-south mountain range in the depths of the Atlantic Ocean where two tectonic plates have been overlapping and grinding against each other for millions of years and are gradually separating from each other.

63. Involved *national identity*. Character of a society = human personality.

Example 63.

64. The American mind is a mutation of the European mind. But separate involution. Adaptation to a radically different habitat ó apparently unlimited in space, with apparently unlimited potential wealth ó with no physical presence of a (relevant) human past ó with a *will* (Schopenhauer) to a self-determining American and human future ó liberated (subjectively) from the hegemony of European social and intellectual experience. (≠Americanø here references the USA.)

Terra rasa. Mens rasa. Foundational myth. **Examples 64.**

65. At first, a purified *religion* (Protestant, Quaker) ó self-determining, without super-ordinate institutions ó spiritually individualistic, but intensely socialised and authoritarian (from 1630). Religion remains a powerful pluralist social phenomenon.

Prolonged agonistic relationship with Britain. Terminated at an intensely significant cultural-historical moment.

The Enlightenment. The spirit of revolution. The rise of industrial capitalism.

66. In response to the new (19th-century) environment and the searing experience of the 20th century, American and European minds mutated once more into newly different forms of the 21st-century American and European minds we know today.

Inherited mental conglomerates (Gilbert Murray).
(*Conglomerate*. Geology. Rock made up of loosely cemented heterogeneous material.)

Example 66.

67. *Der Streit der Rechtskulturen*. Relationship of the American mind to legal philosophy in general of an internal American matter of except to the extent that American law takes effect in other countries and globally. Relationship of the American mind to the philosophy of International Law of very important.

[PJA, "International law and the American mind", *Proceedings of the 97th ASIL Meeting* (2003).]
[PJA, Review essay on three books on the philosophy of international law (BYIL (2010)), available via the following link: <http://www.trin.cam.ac.uk/index.php?pageid=1057>]

68. At the core of the mid-Atlantic geomental fault are two competing and paradoxical mental phenomena of the idea of *law* and the idea of *sociality* of very relevant to the challenge of the self-constituting of international society (a legally organised society of legally organised societies).

69. USA: law is what judges do of law is social engineering of law is politics by other means of law is self-government of law justifies itself of the identity of a human being is primarily social (paradoxical in "the land of the free").

EUROPE: law is a substantial reality of law is a hierarchy of law is a transformed product of politics of the general will is not the will of all of law is ultimately justified by what is beyond law of the social identity of the individual is secondary (paradoxical in the land of absolutism, totalitarianism, bureaucratic hegemonism).

[UK – a thousand islands perched on the Cultural Continental Shelf of Europe
– with its own Exclusive Cultural Zone (ECZ), but exposed to the full force of
transatlantic weather-systems confused concept of law.]

70. *Seelenvolle Geistkämpfer Jenseits des essayismus. Bewusster Utopismus.*
(Robert Musil) (1880-1942)

Unordnung als weg und mittel der ordnung.
(Gottfried Leibniz) (1646-1716)

From dystopian gloom to eutopian cheerfulness.

Example 70.

© Philip Allott 2012.

- 8.** -He [the Bellman] had bought a large map representing the sea,
Without the least vestige of land:
And the crew were much pleased when they found it to be
A map they could all understand.ø
L. Carroll, *The Hunting of the Snark* (1874), Fit the Second.
- 10.** -For if men judge that learning should be referred to action, they judge well; but in this they fall into the error described in the ancient fable, in which the other parts of the body did suppose the stomach had been idle, because it neither performed the office of motion, as the limbs do, nor of sense, as the head does; but yet, notwithstanding, it is the stomach that digests and distributes to all the rest; so if any man think philosophy and universality to be idle studies, he does not consider that all professions are from thence served and supplied.ø -í they are ill discoverers that think there is no land, when they can see nothing but sea.ø F. Bacon, *Advancement of Learning* (1605-33), 2nd bk.
- 14.** *Status ipse praesens, dum tendit ad sequentem seu sequentem praeinvolvit.* -A state [of energy] existing in the present is already tending towards a future state, or [one might say] already contains [enfolds within itself] a future state.ø
G. Leibniz, *New Essays on Human Understanding* (1704/1765). (PJA translation).
- 15.** [God speaking] -We have given to you, Adam, no fixed seat, no form of your very own, no gift peculiarly yours, [in order that] you may feel as your own, have as your own, possess as your own the seat, the form, the gifts which you yourself shall desire. A limited nature in other creatures is confined within the laws written down by me. In conformity with your free judgment, in whose hands I have placed you, you are confined by no bounds; and you will fix limits of nature for yourself. I have placed you at the centre of the world, that from there you may more conveniently look around and see whatsoever is in the world. *You... are the molder and the maker of yourself*; you may sculpt yourself into whatever shape you prefer. You can grow downward into the lower natures which are brutes. Or you can grow upward from your soul.ø reason towards the higher natures that are divine.ø
G. Pico della Mirandola, *Oration on the Dignity of Man* (1486).
- 17.** -Indeed, all being consists in a certain force, and the greater this force, the higher and freer the being. Furthermore the greater the force, the more we see *multiplicity from unity and in unity* since the one governs the many outside itself and pre-forms the many inside itself. Now unity in multiplicity is nothing but harmony. Thus it appears that happiness, joy, love, perfection, being, force, freedom, harmony, order, and beauty are all linked together. Thence follows that nothing serves happiness more than the light of reason. and that such light is especially to be sought in the knowledge of these things which can bring our minds more and more towards a higher light because *from this light springs an ever-enduring progress in wisdom and virtue*. øG. Leibniz *On Wisdom* (c. 1690).
- 18A.** [Glaucon speaking] -You mean the city whose establishment we have described, the city whose home is the ideal, for I think that it can be found nowhere on earth.ø [Socrates speaking] -Well, said I, perhaps there is a pattern of it laid up in heaven for him who wishes to contemplate it and so beholding to constitute himself its citizen. *But it makes no difference whether it exists now or ever will come into being.* The politics of this [city] only will be his [of the human being who wants to live in the best state of being human] and [the politics] of none other.ø Plato, *Republic*, 592a-b (end of Book IX).
- 18B.** -Although we cannot concede to these ideals objective reality (existence), they are not therefore to be regarded as figments of the brain; they supply reason with a standard which is indispensable to it, providing it.í with a concept.í enabling it to estimate and to measure the degree and the defects of the incomplete.ø I. Kant, *Critique of Pure Reason* (1791), bk. ii, ch. iii. sec. 1.
- 19.** [Meno speaking] -But how can you look for something if you don't [already] know what it is? How on earth are you going to set up something you don't know as the object of your search?ø [Socrates speaking] -í seeking and learning are in fact nothing but recollection.ø
Plato, *Meno*, 80d & 81d.

21. "All sciences are now under the obligation to prepare the ground for the future task of philosophy, which is to solve the problem of value, to determine the true hierarchy of values."
F. Nietzsche, *The Genealogy of Morals* (1887), First Essay (end Note).

29.

General normativity. Equations (poetical) of social mechanics

$$S = rm^2$$

Society makes a *general social reality* within universal reality through the interacting of society's *public mind* and the *private minds* of individual human beings.

$$L = sm^2$$

Law makes a *particular legal reality* within general social reality through the interacting of society's *public mind* and the *private minds* of individual human beings.

$$IL = r(sm^2)$$

International law makes a *superordinate legal reality* out of subordinate legal realities through a theory of *universal social representation*.

33A. "A legal relation is *matrix*, because it abstracts and classifies the infinite particularity of persons, places and events. A person, for the purposes of a legal relation, may be a national, an alien, a parent, a corporation, a minor, a trespasser, a police officer, a judge. A place, for the purposes of a legal relation, may be a public highway, a private dwelling, a factory, a court. An event may be a contract, a sale, a marriage, an assault, a licence, the judgment of a court. Legal relations create legal identities. A legal relation is a *heuristic*, because it simplifies actual reality for computational purposes. Actual reality, as it presents itself in human consciousness, is infinitely complex, uncertain and dynamic. In order to make legal relations operationally effective, as instruments of social transformation, they must exclude much of actual reality. They create an *as if* reality. The law will deal with persons, places and events as if their social interactions were limited to the interactions envisaged by a legal relation. A legal relation is an *algorithm* because its function is not merely to re-present social reality but to transform social reality. It is the pattern of a process. That is to say, the coming together of a relevant situation, relevant participants and a relevant legal relation transforms that situation. It is the algorithm aspect that determines the way in which the given social situation is altered."

Ph. Allott, "The International Court and the voice of justice,"
in *The International Court. The First Fifty Years* (1996).

33B. *Out LBW*. The striker is out LBW [Leg Before Wicket] in the circumstances set out below. (a) The bowler delivers a ball, not being a No ball. and (c) the ball not having previously touched his bat, the striker intercepts the ball, either full pitch or after pitching, with any part of his person. and (e) but for the interception, the ball would have hit the wicket. *Laws of Cricket* (2010 Edition).

Rule 27-1f .b. *Ball Out of Bounds*. If a ball is *out of bounds*, the player must play a ball, under penalty of one stroke, as nearly as possible at the spot from which the original ball was last played.

Royal and Ancient Golf Club of St Andrews, *Rules of Golf, 2010-2013*.

Law 11. *Offside*. "It is not an offence in itself to be in an offside position. A player is in an offside position if: he is nearer to his opponents' goal line than both the ball and the second-last opponent. A player in an offside position is only penalised if, at the moment the ball touches or is played by one of his team, he is, in the opinion of the referee, involved in active play: by interfering with play or interfering with an opponent or gaining an advantage by being in that position." ø

FIFA, *Laws of the Game* [football (soccer)], 2012-13.

Thou shalt not kill.ø *Book of Exodus* (King James Version, 1611), ch. 20.

*Le fait de donner volontairement la mort à autrui constitue un meurtre. Il est puni de trente ans de réclusion criminelle.*ø French Penal Code, Article 221-1.

Whosoever shall be convicted of Murder shall suffer Death as a Felon.ø(British) Offences against the Person Act 1861, sec. 1. [Death penalty removed by Murder (Abolition of Death Penalty) Act 1965.]

38A. The great stream of time and earthly things will sweep on just the same in spite of us. It bears with it now all the errors and follies of the past, the wreckage of all the philosophies, the fragments of all the civilizations, the wisdom of all the abandoned ethical systems, the debris of all institutions, and the penalties of all the mistakes. It is only in imagination that we stand by and look at and criticize it and plan to change it. That is why it is the greatest folly of which a man can be capable, to sit down with a slate and pencil to plan out a new social world.ø

W.G. Sumner, The absurd attempt to make the world over [to change the world fundamentally].ø
(1894/1913).

38B. But by far the greatest obstacle to the progress of science and to the undertaking of new tasks and provinces therein is found in this ó that men despair and think things impossible. Next comes a consideration of the greatest importance; I mean that drawn from the errors of past time, and of the ways hitherto trodden. For most excellent was the censure once passed upon a government that had been unwisely administered. øThat which is the worst thing in reference to the past, ought to be regarded as best for the future. For if you had done all that your duty demanded, and yet your affairs were no better, you would not have even a hope left that further improvement is possible.øø

F. Bacon *New Organon* (1620), Bk. I, xcii, xciv.

38C. The aim of the work that I have undertaken, and its results will be to show by appeal to reason and fact that nature has set no term to the perfection of human faculties; that the perfectibility of man is truly indefinite; and that the progress of this perfectibility, from now on words independent of any power that might wish to halt it, has no other limits than the duration of the globe upon which nature has cast us. í Is the human race to better itself, either by discoveries and sciences and the arts, and so in the means to individual welfare and general prosperity; or by progress in the principles of conduct or practical morality; or by a true perfection of the intellectual, moral, or physical faculties of man, an improvement which may result from a perfection either of the instruments used to heighten the intensity of these faculties and to direct their use or of the natural constitution of man? In answering these three questions we shall find in the experience of the past, in the observation of the progress at the sciences and civilization have already made, in the analysis of the progress of the human mind and of the development of its faculties, the strongest reasons for believing that nature has set no limit to the realization of our hopes.ø M.J.A Condorcet, *Sketch for a Historical Picture of the Progress of the Human Mind* (1795).

38D. The change, great as it is, which her polity [England] has undergone during the last six centuries has been the effect of gradual development, not of demolition and reconstruction. The present constitution of our country is, to the constitution under which she flourished five hundred years ago, what the tree is to the sapling, what the man is to the boy. The alteration has been great. Yet there never was a moment at which the chief part of what existed was not old. A polity thus formed must abound in anomalies. But for the evils arising from mere anomalies we have ample compensation. Other societies possess written constitutions more symmetrical. But no other society has yet succeeded in uniting revolution with prescription, progress with stability, the energy of youth with the majesty of immemorial antiquity. ÷

Th. Macaulay, *The History of England from the Accession of James II* (1848), vol. I.

41. ‘All the capacities implanted in a creature by nature, are destined to unfold themselves completely and conformable to their end, in the course of time.ø *Alle Naturanlagen eines Geschöpfes sind bestimmt, sich einmal vollständig und zweckmäßig auszuwickeln.*

I. Kant, *Idea for a Universal History with a Cosmopolitan Purpose* (1784), First Proposition.

42. Intrinsically, it is not a question of the higher or lower degree of development of the social antagonisms that result from the natural laws of capitalist production. It is a question of these laws themselves, of these tendencies working with *iron necessity towards inevitable results*. The country that is more developed industrially only shows, to the less developed, the image of its own future. It is the ultimate aim of this work to lay bare the economic law of motion of modern society.

K. Marx, *Capital* (1867), preface.

43. *Social forms*

1. *Self-consciousness* (an Other in relation to the Selves of other humans).
2. *Species-consciousness* (a social Self in relation to the Selves of non-humans).
3. *Family* (collective consciousness of a household).
4. *Tribe* (family of families).
5. *Mythology / Religion* (higher self-ordering of a tribe).
6. *City* (collective household).
7. *Morality / law* (social self-ordering).
8. *Community* (religious, professional, guild, college).
9. *Nation* (genetic or generic self-consciousness).
10. *Empire* (nation of nations).
11. *League* (nos. 6 and/or 9 collectivised).
12. *Humanity* (collective consciousness of the totality).
13. *Personification* (thing remade as social person).
14. *Reification* (idea remade socially as thing).
15. *Incorporation* (persons remade socially as a social person).
16. *Feudalism* (social structure of property; slavery; serfdom).
17. *Republic* (nation as collective enterprise).
18. *State* (incorporated system of government systems).
19. *Federation* (vertical incorporation of other forms).
20. *Nation-state* (nos. 9 and 18 fused together).
21. *Union* (horizontal incorporation of other forms).

46A. The [internal] history of Philosophy, on the other hand, shows neither the motionlessness of a complete, simple content, nor altogether the onward movement of a peaceful addition of new treasures to those already acquired. It seems merely to afford the spectacle of ever-recurring changes in the whole. I would only remark this, that what has been said reveals that the study of the history of Philosophy is the study of Philosophy itself. What follows secondly from what we have said, is that every philosophy has been and still is necessary. Thus none have passed away, but all are affirmatively contained as elements in a whole. The [internal] history of Philosophy has not to do with what is gone, but with the living present.

G. W.F. Hegel, *Lectures on History of Philosophy* (1805-30), Intro.

46B. A good cultivated mind contains, so to speak, all the minds of preceding centuries; it is but a single identical mind which has been developing and improving itself all this time.

B. de Fontenelle, *On the Ancients and Moderns* (1688-97).

54. G. Leibniz (1646-1715) or the order of the whole universe is enfolded into every unique self-determining part of it, connected to each other in wholes that are more than the sum of such parts.

J-B. Lamarck (1744-1829) or impulse of life driving every organism towards complexity and higher states of development; organism can pass on acquired characteristics to its progeny.

G.W.F. Hegel (1770-1831) ó to study the history of philosophy from the internal point of view is to do philosophy. No philosophies have passed away; all are affirmatively contained as elements of the whole of philosophy.

W. Dilthey (1833-1911) – the mind sciences (*Geisteswissenschaften*) allow politicians, lawyers, theologians, teachers to integrate their work in the total reality of human society.

H. Bergson (1859-1941) ó we are creating ourselves continually ó the creation of self by self (*création de soi par soi* ó cf. Michelet: the *travail de soi sur soi* of France) ó duration (*durée*) is the creating of timeless forms, negating the scientific sense of *time*.

P. Teilhard de Chardin (1881-1955) ó humanity has created another layer of atmosphere (*noosphere* ó *mindosphere*) re-integrating itself with nature ó the human being is evolution become conscious of itself.

D. Bohm (1917-92) ó the implicate order of the universe is enfolded into all things; all things are enfolded into the whole; the contents of consciousness enfold each other.

W.D. Hamilton (1936-2000) ó inclusive fitness ó non-reproducing members of a social (animal) group may contribute to the fitness-to-survive of the group as a whole.

(the powerful metaphor of ñfoldingø ñenfoldingø ñunfoldingø Classical Latin ó *volvere* ó to turn, to unfold; past participle: *volutum*; *evolvere* ó to roll out; *revolvere* ó to roll back; *involvere* ó to roll in, fold in, enfold ó and *plicare* ó to fold: implicit, implicate; *complicare* ó to fold up, together: complex, complicate.)

57A. ñOur contemporaries are constantly excited by two conflicting passions: they want to be led, and they wish to remain free. As they cannot destroy either the one or the other of these contrary propensities, they strive to satisfy them both at once. They devise a sole, tutelary, and all-powerful form of government, but elected by the people. They combine the principles of centralization and that of popular sovereignty. Every man allows himself to be put in leading-strings, because he sees that it is not a person or a class of persons, but the people at large who hold the end of his train. ø

ñSuch a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd. ø

A. de Tocqueville, *Democracy in America* (1835/40), vol. ii, bk. iv, ch. vi.
(chapter title: ñDespotism in Democratic Nationsø)

57B. ñOur civilisation is taking on, or tending to take on, the structure and properties of a machine. This machine will not tolerate less than world-wide rule; it will not allow a single human being to survive outside its control, uninvolved in its functioning. ø

P. Valéry, ñRemarks on Intelligenceø(1925).

57C. ñUniversal history must be construed and denied. After the catastrophes that have happened, and in view of the catastrophes to come, it would be cynical to say that a plan for a better world is manifested in history and unites it. Not to be denied for that reason, however, is the unity that cements the discontinuous, chaotically splintered moments and phases of history ó the unity of the control of nature, progressing to rule over men, and finally to that over man's inner nature. ø

Th. Adorno, *Negative Dialectics* (1966/73), pt. III, sec.ii.

57D. ñThe enchained possibilities of advanced industrial societies are: development of the productive forces on an enlarged scale, extension of the conquest of nature, growing satisfaction of needs for a growing number of people, creation of new needs and faculties. But these possibilities are gradually being realized through means and institutions which cancel their liberating potential, and this process affects not only the means but also the ends. The instruments of productivity and progress, organized into a totalitarian system, determine not only the actual but also the possible utilizations. ø

H. Marcuse, *One-Dimensional Man* (1964), ch. 10.

57E. ñIf once men are permitted to coalesce into what Aristotle calls ñthe multitudeö, a characteristic of beasts, this abstraction (instead of being regarded as less than nothing, as in fact it is, less than the lowliest individual man) will be regarded as something, and no long time will elapse before this abstraction becomes God. ø S. Kierkegaard, *The Sickness unto Death* (1849).

57F. ‘There is one fact which, whether for good or ill, is of utmost importance in the public life of Europe at the present moment. This fact is the accession of the masses to complete social power. As the masses, by definition, neither should nor can direct their own personal existence, and still less rule society in general, this fact means that actually Europe is suffering from the greatest crisis that can afflict peoples, nations, and civilisation.ø J. Ortega y Gasset, *The Revolt of the Masses (La rebelión de las masas)* (1930). [Ortega’s ‘masses’ are not merely those formerly known as ‘the proletariat’ but anyone (*el hombre masa*), of any class, who has surrendered to mass phenomena and mass consciousness.]

63. ‘We are all born with some bias in our natural temper.ø
 J. Locke, *Essay Concerning Education* (1693).
 - *ethos anthropo daimon* ó ‘character is destiny’
 Heraclitus (6th-5th cent. BCE).

64A. ‘For first of all, what is a nation, or what makes a nation? Certainly it is not the mere spatial coexistence of a greater or lesser number of similar individuals, but rather a community of consciousness among them. This community has its immediate expression only in a common language; but wherein shall we seek this community itself or its foundation except in a common world view, and wherein can this common world view in turn be originally contained and given to a people except in its mythology?ø F. Schelling, *Philosophy of Mythology* (1842).

64B. ‘Every nation has its own core of happiness just as every sphere has its centre of gravity.ø
 J.G. Herder, *Education of Mankind* (1774).

66. EURAMERICAN INHERITED MENTAL CONGLOMERATES



70. ‘Dr Johnson’s friend Edwards said: ‘You are a philosopher, Dr Johnson. I have tried too in my time to be a philosopher; but, I don’t know how, cheerfulness was always breaking in.’
 J. Boswell, *Life of Samuel Johnson, LL.D* (1791), entry for 17 April 1778.