

The Ever Changing Legal Dimension and the Controversial Notions of Law and Science

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SUMMARY: 1. *The Apparent Paradox of the Difficulty to Define What the Law Is* – 2. *The Necessary Opening of Legal Culture to Social Transformations* – 3. *Historicity of Law. Beyond a Concept with Only a Western Matrix* – 4. *The Change in ‘Legality’ in Modern Societies Focusing on Pluralism* – 4.1. *Technological Advances, Changing Factual and Cultural References and the Consequences within the Legal Dimension* – 5. *The Idea of Science and the Concept of the Completeness or Incompleteness of the Legal Order*

1. THE APPARENT PARADOX OF THE DIFFICULTY TO DEFINE WHAT THE LAW IS

An apparent paradox characterises the work of the jurist: the difficulty of defining the object of his investigation. The most difficult question to find an answer for is precisely what is the law¹.

To understand the nature of the legal dimension, it is necessary to begin with an awareness of that very paradox and the difficulty it brings with it.

For a long time, the dominant legal culture, in particular, in civil law countries, aspired to give a definitive reply to this question: the presumption of the certainty of the law and the completeness of the legal order appeared to be features of the legal dimension that could not be renounced; these are objectives that can be pursued, according to this approach, attributing the monopoly of law-making to the State and reducing the role of the jurist to that of a simple commentator of the legislator’s intent².

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¹ So much so that it has been said that asking what is the law is a “persistent” question, see H.L.A. HART, *The Concept of Law*, Oxford, Clarendon Press, 1994, II ed. (Italian translation, *Il concetto di diritto*, Torino, Einaudi, 2002), cited in SIMONCINI A., *Cos’è il diritto? Una domanda “persistente”*, in Ventrino F., Barcellona P., Simoncini A., “La lotta tra diritto e giustizia”, Genova-Milano, Marietti, 2008, p. 149 ff.

² For a critique of this claim, see, for this purpose, the great number of scientific works by P. GROSSI, in particular, *Assolutismo giuridico e diritto privato*, Milano, Giuffrè, 1998, and *Mitologie giuridiche della modernità*, Milano, Giuffrè, 2001.

The foundation and prevalence of such a concept do not have anything to do with the presumed ontological characteristics of the law but rather with its functionality to political-institutional unification processes (understood as a reduction) in national legal orders.

For this purpose, ‘legal science’ has, indeed, elaborated refined theoretical constructions, but they are often based on prevarication: the presumption being their result expression of the only law imaginable³, rather than of a very concrete historical process.

In this way, every dominant concept of law has become, in ‘psychology’ not only that of the jurist but collectively, *the Law*.

This presumption seems to be at the base of the explanations of great theorists who come from a very different cultural approach. These involve concepts of the law that continue according to ideological instead of scientific schemata: that is, the law is what enters into a predefined theoretical schema.

Presuming once and for all to define an a-temporal legal concept has, in this way, lead to the elaboration of refined theories of extraordinary internal consistency but weak (and furthermore: resistant) in grasping the perennial changing of the social dimension.

Frequently, ‘legal science’ has ended up moving forward by means of great dichotomies: natural law/positive law; common law/positive law; private law/public law and by adhering to one of two opposing poles relegated to the mere fact that all of this is not attributable to it⁴. In this way, yet again, an abstract consistency of legal concepts is preserved at the expense of the heterogeneous, plural, multiform, *real* representation of legal regulation.

³ A claim made in a peremptory way at times of consolidation within a legal order (see, P. COSTA, *Lo Stato immaginario. Metafore e paradigmi nella cultura giuridica tra Ottocento e Novecento*, Milano, Giuffrè, 1986) that is threatened during times of transition (see, O. ROSELLI, *Dimensione politica e forma di Stato*, in Caretti P., Grisolia M.C. (a cura di), “Lo Stato costituzionale. La dimensione nazionale e la prospettiva internazionale. Scritti in onore di Enzo Cheli”, Bologna, Il Mulino, 2010, p. 117 ff., now in O. ROSELLI, *Riflessioni sulle trasformazioni della dimensione giuridica*, Napoli, ESI, 2011, p. 55 ff.).

⁴ See N. BOBBIO, *Dell’uso delle grandi dicotomie nella teoria del diritto*, in “Rivista internazionale di filosofia del diritto”, Vol. 47, 1970, p. 187 ff. (and in *Studi in onore di Giuseppe Grosso*, Torino, Giappichelli, Vol. 4, 1971, p. 615 ff.); ID., *La grande dicotomia*, in “Studi in memoria di Carlo Esposito”, Padova, Cedam, 1974, p. 2187 ff., now both in ID., *Dalla struttura alla funzione*, Roma-Bari, Laterza, 2007, respectively, p. 101 ff. and p. 122 ff.

2. THE NECESSARY OPENING OF LEGAL CULTURE TO SOCIAL TRANSFORMATIONS

A legal culture that loses its awareness of the historical motives that have lead to the creation of its categories is unfit to grasp the emerging needs governing society. This unfitness appears obvious to everyone in a time of transition like ours, where the system of legal sources is in crisis precisely because it was designed for a society different from the present one which is now in profound transformation. The task of the jurist is to recognise the “signs” of this transformation and to reappraise categories, tools, and legal institutions⁵. If it is not capable of doing this, the law loses part of its function, with consequences that can be dramatic for social coexistence and peace among nations.

Modern legal culture is faced with an obvious difficulty in performing its critical function when it encounters the transformation of our society into multicultural societies; the phenomena of globalisation; the invasiveness of new technologies; the changing relationship among rules, time and space; it is ‘disarmed’ with respect to the acceleration of transformation processes. Often, we witness the presumption of regulating new social phenomena by using already old legal categories and, sometimes of not recognising the normative nature of social ordering processes.

With regard to plural globalisations, a part of legal authority has expressed doubt about whether we can talk about the existence of a “global” law⁶. In this rejection, we can see the reflection of a concept of static, abstract, self-sufficient law compared to other (social, religious, moral) subsystems.

In the current historical phase, the same fundamental legal categories are transforming because they are suffering the consequences of the momentous change in societies. This change should not surprise us, but instead the disorientation of legal authority that seems to have lost awareness that legal

⁵ This is the basic teaching of Paolo Grossi (see O. ROSELLI, *Il progetto culturale e scientifico dei Quaderni fiorentini per la storia del pensiero giuridico moderno nelle Pagine introduttive dei primi trent'anni*, in “Sociologia del diritto”, 2009, n. 3, p. 39 ff., now also in ID., *Riflessioni sulle trasformazioni della dimensione giuridica*, Napoli, ESI, 2011, p. 67 ff.). Naturally, the history of modern legal thinking is full of jurists committed to recognising the signs of social change and their consequences in the legal sphere: intellectually aware jurists are the object of reflection in P. GROSSI, *Nobiltà del diritto. Profili di giuristi*, Milano, Giuffrè, 2008.

⁶ As mentioned by M.R. FERRARESE, *Prima lezione di diritto globale*, Roma-Bari, Laterza, 2012, p. 5 ff.

categories have an intrinsic historical dynamism and ability to transform. It almost seems to have forgotten that fundamental notions like sovereignty, legality, source of law have often undergone changes in meaning.

If this awareness had not been lost we would, as jurists, have greater tools available to us for organising an increasingly magmatic reality. Above all, the starting point for legal thinking would not be the presumption to circumscribe the notion of the law by using abstract conceptual categories; the understanding of the phenomena that they want to regulate and the correlation between provisions and facts would be taken as the starting point; there would be greater awareness of the processes of osmosis among social ordering subsystems; there would be greater cognizance that the boundary among the various social subsystems is mobile and non definable once and for all. The error of believing that our epoch is an epoch of crisis in the law would not be made: dated manifestations of the law are in crisis; in fact, modern societies have the need for new and renewed legal circuits.

3. HISTORICITY OF LAW. BEYOND A CONCEPT WITH ONLY A WESTERN MATRIX

Furthermore, the very historical verifiability that every society requires of the law (*ubi societas, ibi ius*) and of its very varied manifestation of itself testifies how the term 'law' is designated as a congenital phenomenon of the various social dimensions but one whose characteristics are linked to specific historical contexts. For a long time, western culture has been closed within an autarchic concept of the law, not generally going beyond its own historical experience, as though other civilisations had not produced legal orders.

The notion of '*ius*', understood as the birth of legal science, comes to be traced back to the construction of Roman law, even if it was impressive⁷, putting the considerable influence of Greek culture and the legal tradition of the *polis* in the shade⁸. The experiences of ancient societies⁹ have often been evaluated with the deformed glance of the Romanist model and/or of

⁷ A. SCHIAVONE, *Ius. L'invenzione del diritto in Occidente*, Torino, Einaudi, 2005.

⁸ Regrets that the teaching of ancient Greek law is "not very wide spread", E. CANTARELLA, *Diritto greco. Appunti delle lezioni*, Milano, Cuem, 1994, II ed., p. 3.

⁹ Obviously, there is no lack of studies on the legal aspects of the most differing ancient civilisations, see, for example, C. SAPORETTI, *La nascita del diritto. Studi sulle leggi della Mesopotamia antica*, Roma, Aracne, 2010.

modernity; often studied little and almost always badly understanding their originality¹⁰.

The reaction of early western jurists to contact with the 'Celestial Chinese empire' is significant: looking for institutions, categories, organs and organisational models and not finding them in the Chinese system they reached the conclusion that that thousand year old empire had no knowledge of the law¹¹. This is a typical reaction of a 'western-centric' culture which means today we have little preparation in understanding the plural dynamics of globalisation. These are dynamics that bring into contact not only capital and goods but people in flesh and blood with different values and cultures and that foster contamination among legal orders, even those of non western tradition¹².

Such contamination is very necessary because it can become a tool for a common language over and above differences among cultures. In this manner, the law sees its role widened, becoming the place where we find a synthesis between even opposing interests and cultures which the crisis in State territoriality is increasingly putting in direct contact.

We quickly need to take into account the social and technological transformations that do not give enough time to be psychologically metabolised

¹⁰ It was a long tradition, in writing entries for encyclopedias and monographs, to reconstruct the history of legal institutions beginning from ancient civilisations, but they are generally not very fruitful reconstructions and are rarely capable of recognising the historical differences.

¹¹ Marina Timoteo is among Italian jurists who have focused closer attention on the study of Chinese law within the transnational dimension. Here are just some of her works: *Le successioni nel diritto cinese. Evoluzione storica ed assetto attuale*, Milano, Giuffrè, 1994, *ivi*, pp. 129-143, sources and bibl.; *Il contratto in Cina e Giappone nello specchio dei diritti occidentali*, Padova, Cedam, 2004, *ivi*, pp. 371-391, bibl.; *Circolazione dei modelli e riforme giuridiche. Il caso est-asiatico*, Bologna, Libreria Bonomo editrice, 2005 (that also concentrates on linguistic problems of the compatibility of western models in Japan). Important for understanding both the original Chinese legal model and the processes of modernisation within that country is the volume by L. MOCCIA, *Il diritto in Cina. Tra ritualismo e modernizzazione*, Torino, Bollati Boringhieri, 2009. The increasing influence of Chinese law in transnational economic relations is pointed out in F. GALGANO, *La globalizzazione nello specchio del diritto*, Bologna, Il Mulino, 2005, *passim*.

¹² Even comparative law studies necessitate a greater opening towards comparison with legal orders belonging to legal families with non-western traditions. Moreover, French legal culture has paid special attention to the study of Islamic legal orders as we can see from a vast number of scientific works and conferences, like the one held in Strasbourg on 25 and 26 March 2010, entitled *La Shari'a dans le droit d'aujourd'hui*; whilst the American studies on Chinese law are important.

and this is an obstacle to the formation of shared social rules¹³. This also contributes to making it necessary to enhance legislative circuits capable of providing answers to arising needs; circuits that are described as ‘legal’ not so much and not always in virtue of a constituted power but because of their unmodifiable necessity.

4. THE CHANGE IN ‘LEGALITY’ IN MODERN SOCIETIES FOCUSING ON PLURALISM

Great jurists of times of transition provide us with invaluable methodological suggestions: to focus special attention on the emergence of those phenomena that move profoundly towards modifying reality, the social context. Thus, between the end of the 1800s and the beginning of the 1900s, for example, some great jurists inferred from social and non legal phenomena, how the birth of popular parties and trade unions would have profound effects on the form of the State, on the fundamental characteristics of the legal order¹⁴.

It is from the observation of the changed social reality that scholars like Santi Romano¹⁵ inferred that not only single institutions were changed but also the organisational processes of the legal dimension that could not be traced back only to the State order. Romano’s teaching, historically verified, of the plurality of legal orders, widens the asphyxiated notion of the law and is still valuable today in understanding the plural manifestations of the legal dimension.

¹³ O. ROSELLI, *Aspetti socio-culturali della globalizzazione*, in “Quaderni AUDEL (Amici dell’Università dell’Età Libera)”, Firenze, June 2001, p. 12 ff., now in ID., *Riflessioni sulle trasformazioni della dimensione giuridica*, cit., p. 13 ff.

¹⁴ For further in-depth analysis of these matters, see O. ROSELLI, *La dimensione costituzionale dello sciopero. Lo sciopero come indicatore delle trasformazioni sociali*, Torino, Giappichelli, 2005 and ID., *Il problema degli indicatori delle trasformazioni sociali*, in Poggi A., Roselli O. (a cura di), “Trasformazioni sociali e trasformazioni giuridiche”, Napoli, ESI, 2007, p. 27 ff. (now also in O. ROSELLI, *Riflessioni sulle trasformazioni della dimensione giuridica*, cit., p. 19 ff.).

¹⁵ In the first place, the reference is to *L’ordinamento giuridico* of 1918. On the contribution of Santi Romano to a renewed understanding of the legal phenomenon, see P. GROSSI, *Santi Romano: un messaggio da ripensare nella odierna crisi delle fonti*, in “Rivista trimestrale di diritto e procedura civile”, 2006 and, more recently, in *Nobiltà del diritto. Profili di giuristi*, cit., p. 669 ff.; ID., *Lo Stato moderno e la sua crisi (a cento anni dalla prolusione pisana di Santi Romano)*, in “Rivista trimestrale di diritto pubblico”, 2011, n. 1, p. 1 ff.; N. BOBBIO, *Teoria e ideologia nella dottrina di Santi Romano*, in “Dalla struttura alla funzione”, cit., p. 139 ff.

“La struttura interna di un ordinamento” is not necessarily the outcome of the activities of the State or, in any case, of a structured power. It may well be the product of

“una comunità, piccola o grande, che trova il suo fattore di coesione in valori assunti (e condivisi) da ciascuno dei suoi membri quale fondamento ineludibile, quel fondamento che giustifica interamente ogni regola comunitaria e la assolutizza nella coscienza dei socii, imponendone una inderogabile osservanza; quel fondamento che, nella sua tipicità e irripetibilità, identifica quel singolo ordinamento rispetto a ogni altro, lo rende in sé – cioè nel proprio ordine – completo and autosufficiente”. “In altre parole, il carattere originario di un ordinamento esprime l’idea che le ragioni o le giustificazioni fondative di questo corrispondano, nel profondo, alla vita della relativa comunità, per come questa, nel suo complesso ma peculiare strutturarsi, sia stata capace di individuare e salvaguardare gelosamente i propri caratteri e la propria specifica identità”¹⁶.

These considerations of legal historian, Paolo Grossi, point to the congenital pluralism of the legal dimension and are enlightening in understanding today’s multiform legislative structuring of very variegated transnational contexts.

Jurists have a difficult task: to understand the differentiated modes for rule-making and the formation of the various legal orders in multiple contexts. That is, by erroneously conjugating in the singular, usually defined globalisation does not, in fact, produce only unifying dynamics but also articulations and sometimes fragmentations that are even more consolidated the more they correspond to aspects characterising reality.

This requires updated training for lawyers, able to provide tools for understanding not only the sources of law produced by States but the others,

¹⁶ See P. GROSSI, *Sui rapporti tra ordinamento statale e ordinamento sportivo*, in “Diritto amministrativo”, 2012, n. 1-2, p. 11: “the internal structure of a legal order” (... may well be the product of) “a community, big or small, that finds its cohesive factor in values assumed (and shared) by each of its members as an ineludible foundation, that foundation that entirely justifies every community rule making it absolute in the consciousness of the members, imposing compliance that cannot be derogated from; that foundation that, in its typical and unique nature, identifies that individual legal order compared to others, makes it in itself – that is, in its own order – complete and self-sufficient”. “In other words, the original character of the legal order expresses the idea that the motives or grounds founding it correspond, deep down, to the life of the relative community for the way in which this, in its overall but distinctive organisation, is able to identify and jealously protect its own features and its own specific identity”.

in continual expansion, produced by always new communities of actors and the force of economic processes¹⁷.

Legal authority¹⁸, jurisprudence, arbitration awards, custom, the role of jurists in orienting institutions behaviours, large law firms, bodies that we can define as research organisations applied to the law like UNIDROIT, parties like the International Chamber of Commerce in Paris acquire an increasingly important role in modern law making.

The complexity and changeability of relations require professionalism and flexibility. The challenge of globalisations and competition among economic systems is not so much all about the material factors of production but about the capacity of legal culture to put an ever increasingly complex social dimension into order.

4.1. *Technological Advances, Changing Factual and Cultural References and the Consequences within the Legal Dimension*

Technological advances have very important consequences in legal orders: because they change the relationship of the rules with time and space¹⁹; they tend to determine an actual anthropological change²⁰; they have a bearing on fundamental cultural references and values. With regard to the first two aspects, there is now a lot of well argued material to which the reader is referred.

With reference to the effect of planetary technological development in the entrenchment of millennial cultural references and values it is thought that some talk about of “the death of one’s neighbour”, believing that one of the characteristics of the “pre-technological world” no longer exists: “neigh-

¹⁷ See O. ROSELLI, *Scritti per una scienza della formazione giuridica*, Napoli, ESI, 2012.

¹⁸ Provided that legal authority knows how to contribute to renewing legal analysis and tools.

¹⁹ There are many contributions on this matter, see, for this purpose, M.R. FERRARESE, *Il diritto al presente. Globalizzazione e tempo delle istituzioni*, Bologna, Il Mulino, 2002.

²⁰ See, among others, the considerations of the philosopher and psychoanalyst U. GALIMBERTI, *Psiche e techne. L'uomo nell'età della tecnica*, Milano, Feltrinelli, 1999; from the large number of works by the same Author, see, *I miti del nostro tempo*, Milano, Feltrinelli, 2009, in particular, the second part relating to “Collective Myths”, p. 205 ff. Among non legal studies that could provide the jurist with interesting ideas, there are some by Marc Augé, who has, amongst other things, looked at the anthropological condition of post-modern man: most recently, M. AUGÉ, *Futuro*, Torino, Bollati Boringhieri, 2012.

Regrettably, within the Italian panorama, there is a trend towards atrophy within studies of legal anthropology.

bourhood". Thus, after the concept of modernity like the 'death of God', that of the 'death of one's neighbour' would affect social perception of the entire biblical commandment "*love God and love thy neighbour as thyself*"²¹.

This is a psychoanalytical reconstruction of the condition of post-modern humanity that can well explain wide-spread existential and social disorientation. Even so the outcome of technological advances and globalisation could also be lived not as an extinction of neighbourhood but, on the contrary, of a now general condition of sharing²². The perception in a sense ('the death of one's neighbour') or in another ('every human being is now a neighbour') will depend on prevailing cultural trends that will bring with them different incorporations of values into the legal order.

More so than in the past, the legal sphere is situated at a crossroad of other social ordering (social, moral, religious and technical-scientific) subsystems, none of which is exhaustive in determining a *sustainable order*. To a greater extent than in the past, the law is asked to determine that ordering dimension that would otherwise be missing. From all the evidence, it emerges yet again that the function of the law and the responsibility of the jurist class are widening.

A renewal of legal culture proceeding at the same pace as the maximum openness towards other sciences without breaking down in a confused and ineffective eclecticism is required.

The greatest difficulty for the modern jurist is to acquire a method that enables him to decipher the consequences of social transformations; consequences whose effects are manifested at every level of the system of sources, even at constitutional level. In this way, current transformations profoundly change modern societies which influence important aspects of the legal order, even if legislative provisions remains unchanged. So that is why the jurist must be open even more so than in the past²³ to the contribution of other sciences (researching assistance in the most widely differing scientific disciplines). It is significant how in the sphere of sociological studies analy-

²¹ L. ZOJA, *La morte del prossimo*, Torino, Einaudi, 2009 (emphasis added by the Author of the book).

²² Amongst other things, this seems to me to the point of view of scholars like U. ALLEGRETTI, *Diritti e Stato nella mondializzazione*, Troina (EN), Città Aperta, II ed., 2002, p. 302 ff., bibl.

²³ Norberto Bobbio noted how the different legal disciplines have been flanked, in symbiosis, by non legal disciplines, for example: constitutional law by political science, international law by international relations, administrative law by administrative science (N. BOBBIO, *Diritto e scienze sociali*, in ID., "Dalla struttura alla funzione", cit., p. 43).

ses capable of recognising aspects characterising modern societies have been carried out (like the ‘fluidity’, precariousness, instability of relationships²⁴, the constantly wide spread condition of risk²⁵) or how the neurosciences²⁶ influence our knowledge of processes of intent and, all of this makes it necessary for us to reflect again on our fundamental legal institutions.

But the moment when the jurist evaluates the relationship between the provision and the fact²⁷ (for the comprehension of which he must avail himself of the contribution of different disciplines and sciences other than his own), he must have firmly fixed in his mind the specificity of legal culture²⁸ (and the role of the law that is historically linked to the form of the State and its evolution). Social change and scientific and technological advances transform the reality that they aim to regulate (of this transformation of reality the jurist must know how to take cognizance), but *conditioning* of the factual context *does not mean automatism of the change of the legislative*

²⁴ Take, for example, the large number of observations made by ZYGMUNT BAUMAN, of which I will only mention, *Liquid Modernity*, Oxford, Polity Press, Cambridge and Blackwell Publishers Ltd., 2000 (Italian translation, *Modernità liquida*, Roma-Bari, Laterza, 2006, X ed.); *Society under Siege*, Oxford, Polity Press, Cambridge and Blackwell Publishers Ltd., 2002 (Italian translation, *La società sotto assedio*, Roma-Bari, Laterza, 2007, IV ed.); *Liquid fear*, Cambridge, Polity Press, 2006 (Italian translation, *Paura liquida*, Roma-Bari, Laterza, 2008).

²⁵ I am thinking, in the first place, of the views of Ulrich Beck.

²⁶ Among the Italian jurists who have dedicated themselves with particular sensitivity to the relationship between neuroscience and the law, I will only mention Eugenio Picozza, Federico Gustavo Pizzetti, Amedeo Santosuosso. For our purposes, it is sufficient to refer to E. PICOZZA, D. TERRACINA, L. CAPRARO, V. CUZZOCREA, *Neurodiritto: una introduzione*, Torino, Giappichelli, 2011; F.G. PIZZETTI, *Neuroscienze forensi e diritti fondamentali: spunti costituzionali*, Torino, Giappichelli, 2012; A. SANTOSUOSSO (a cura di), *Le neuroscienze e il diritto*, Como-Pavia, Ibis, 2009; ID., *Diritto, scienza, nuove tecnologie*, Padova, Cedam, 2011, in part. p. 213 ff., *ivi*, p. 313 ff. bibl. Among more recent meetings, the seminar organized by Nicola Lettieri, Ernesto Fabiani, Sebastiano Faro, *Diritto & Neuroscienze. Temi e proposte per la teoria e la pratica del diritto* (Rome 3 December 2012) is worth mentioning.

²⁷ Interesting observations about transformations of the legal dimension have been made by M. VOGLIOTTI, *Tra fatto e diritto. Oltre la modernità giuridica*, Giappichelli, Torino, 2007. Written by the same Author, see, *Il tramonto della modernità. Un percorso interdisciplinare*, Giappichelli, Torino, 2008 and ID., *Dalla crisi delle fonti al primato dell'interpretazione: conseguenze sull'insegnamento universitario del diritto*, in Palazzo F., Roselli O. (a cura di), “I professionisti della giustizia”, Napoli, ESI, 2007, p. 167 ff.

²⁸ Caution should be used in automatically transposing sociological analysis into the legal dimension, with specific reference to Bauman’s “liquid/solid” notions: P. GROSSI, *Tra fatto e diritto*, in “Quaderni Fiorentini”, 2009, n. 38, p. 1903.

framework: there is the role of interpretation (of the judge, arbitrators, the academic jurist, administrative apparatuses, lawyers interested in the application of the provisions) to mediate between the change in reality and the provisions. As Ascarelli²⁹ teaches us (and the Italian Constitutional Court itself, that has by no coincidence elaborated an articulated type of decisions) only when the provisions are interpreted they turn into rules.

When, for example, we use neurosciences or computational sciences³⁰ (often an indispensable aid for the fundamental legal profile of the interpretation of the fact), it is then necessary to keep well in mind that

“Il diritto non ha carattere matematico e l’opera dell’interprete non può ridursi a una deduzione logica: al contrario l’opera dell’interprete non può prescindere da – are Ascarelli’s words reported by Bobbio – ‘continue valutazioni onde fissare la regola e l’eccezione, determinare nell’unità del sistema la portata di un principio giuridico, valutazioni che hanno luogo in base a tutti i dati logici, storici, politici, economici, risultanti dal sistema, in base alla generale concezione dell’interprete del sistema giuridico e del fenomeno sociale, del suo sviluppo storico, del senso della sua evoluzione”³¹.

Rethinking legal institutions is an indicator of the trend in society and describes the type of cultural priority in giving an answer to “civilisation and its discontents”³². This is further evidence of how the legal sphere incorporates not only a fabric of provisions but also the factual dimension interpreted in the light of cultural trends. Evaluation by the jurist of the contribution of other sciences (of any kind, social or ‘exact’³³) cannot be

²⁹ N. BOBBIO, *Tullio Ascarelli*, in ID., “Dalla struttura alla funzione”, cit., p. 223 ff.

³⁰ See, overall, S. FARO, N. LETTIERI, A. TARTAGLIA POLCINI (a cura di), *Diritto e tecnologia: verso le scienze sociali computazionali. Attualità e orizzonti dell’Informatica giuridica*, Napoli, ESI, 2011.

³¹ “The law does not have a mathematical nature and the work of the interpreter cannot be reduced to a logical deduction: on the contrary, the work of the interpreter cannot disregard – are Ascarelli’s words reported by Bobbio – ‘continuous evaluations in order to fix the rule and the exception, to determine within the unit of the system the scope of a legal principle, evaluations that take place based on all the logical, historical, political and economic data resulting from the system, on the basis of the interpreter’s general concept of the legal system and of the social phenomenon, of its historical development, of the sense of its evolution””, N. BOBBIO, *Tullio Ascarelli*, cit., p. 209.

³² If you let me borrow (giving it a broad meaning) the title of a 1929 essay by SIGMUND FREUD, *Civilisation and Its Discontents*.

³³ In the area of the definition of ‘science’, there is not even any terminological agreement: thus, exact, experimental, formal, human, social, life, material, cultural and still other sci-

performed by being flatly mechanical but he must have the greatest understanding of the reality that the law is to regulate.

5. THE IDEA OF SCIENCE AND THE CONCEPT OF THE COMPLETENESS OR INCOMPLETENESS OF THE LEGAL ORDER

Sometimes, jurists who are meritoriously open to the contribution of other sciences have a sense of cultural inferiority, in particular, in comparison with so-called “exact sciences”, almost as if they had introjected a reductionist concept of science, according to which social sciences and humanities are minor sciences because they are deemed to be less able to allow us to acquire certainties and envisage complete systems. With this, a kind of nostalgia for the idea of the certainty of the law and the legal order as complete reality is manifested. These are concepts that are debtors to an idea of the enlightenment of science as a complete system; an idea of science understood as a method for gaining certainties.

But scientific research assumes continual verification of its results, and is structurally aimed at going beyond them. Science is, as Popper tells us, a research method capable of rethinking its results which are never assumed to be ontologically definitive.

“The idea of incompleteness”³⁴ concerns not only the law, as it “belongs to the very nature of the legal order”³⁵, but every intellectual sphere. This awareness should aid the jurist in overcoming his sense of inferiority regarding the sciences considered to be ‘exact’ and the sensation of scientific fragility in coming to terms with a world in whirling transformation.

The challenge to incompleteness does not lie in the presumption of rebuilding definitive certainties but in persevering in research and confrontation.

ences are talked about (allow me to refer the reader to: O. ROSELLI, *Scienza, scienza giuridica, scienza della formazione giuridica*, in “Rassegna di diritto pubblico europeo”, 2010, n. 2, p. 183 (recently also in ID., *Scritti per una scienza della formazione giuridica*, cit., p. 215 ff.).

³⁴ This is the title of a book by S. VECA, *L'idea di incompletezza. Quattro lezioni*, Milano, Feltrinelli, 2011.

³⁵ N. BOBBIO, *Tullio Ascarelli*, cit., p. 194.