Change of Law: Backgrounds and Limits, Expectations and Realizations

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> *Th[e] search for static security—in the law and elsewhere—is misguided. The fact is that security can only be achieved through constant change [Douglas (1949), p. 7].*
> *Thinking of law as a complex adaptive system reveals the importance of laws and lawyers as integral parts of law's fitness landscape, but just as surely reveals the importance of humility. We will never get the legal system 'just right', at least not for long, but if we are mindful of its properties and the need for continuous work at living within its stable disequilibrium, we can hope to keep it fit indefinitely [Ruhl (2008), p. 911].*

Abstract In this chapter, law as an object of change is seen in regard to the historically generalizable trinity of (1) the establishment and (2) the enforcement of the law by the state, as well as (3) the exercise of whatever is regarded as 'law' in society. Then law and its changes are treated in parallel according to the respective legislative and judicial paths. The essence of law serving as a 'patterned pattern' is mediation, which, especially in recent times, the judiciary has constantly tried to weaken. This movement now—when the immense overdevelopment and predominance of formal rationality itself has become irrational—involves the rejection of the radicalism with which the formal rationality of regulatory systems was once fought for. The overview of this will show that the process is ultimately able to destroy the very distinctness of law. As finally concluded, legal change is not an end in itself but a means of maintaining an organic functional relationship between law and its social medium. This relationship is not a mechanical one but a series of further socio-legal mediations expressed through complex interactions. All in all, the road from legal change to the prospect of actual change is long, complicated, and not without risk.

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F. Gárdos-Orosz (ed.), *The Resilience of the Hungarian Legal System since 2010*,
European Union and its Neighbours in a Globalized World 16,
https://doi.org/10.1007/978-3-031-70451-2_12

1 Law as an Object of Change

From the very first moment of academic reflection on law, it has been almost a truism that law, in its socio-historical generality, is not something given from above or from without but an integral part of the existence and life of the people who live it;[1] indeed, all that we see today as the great edifices of continental and Anglo-Saxon law themselves developed from nothing more than the daily practice of rustic communities in the manner of the tribal rights discovered by legal anthropologists.[2] It is an equally commonplace truth today to deduce that, since '[h]istory, in the objective meaning of the word, is the process of change',[3] the constant change of the conditions of existence and circumstances also implies a constant change of law; and that any such change must take place on the grounds of an inner unity between people and law, that is, of *self-identity* and *organicity.*

It was around the same time, a century or so ago, that the former rector of the university in the Austrian-administered capital of Bukovina, founded just a few decades previously, set up an institute for the study of *'living law'* to examine the legal culture of the province, making it the other pole of law to positive law in his pioneering sociology of law,[4] and that, also out of a sociological interest in law, a law professor from Nebraska conceptually separated the law as written *in books* from the law as manifested *in action.*[5] At the same time, of course, the difference between them is obvious: the former was a realization of a normative culture which had been functioning and developing practically independently of what had hitherto been exclusively acknowledged and recognized as official, albeit for ages in its quasi-immediate environment, while the latter was more the professorial declaration of a professional claim to acknowledge and analyze the findings of the court, a branch of power independent of the legislature, as to what the law is—a sui generis manifestation of the law. They were united, however, in treating what had hitherto been seen as the sole source of law, now constantly threatened by the self-assertive competition of other factor(s) in their own domains, as merely one of the forces making law.

Myself, I attempted to depict the difference between positivist and sociological conceptions of law nearly half a century ago in the form of a set of *circles* operating in a largely shared space, partly overlapping but, in principle, in constant

[1] '[L]aw is life itself' – quoting F. S. C. Northrop. See Northrop ([1959]), p. 3.

[2] E.g. van Niekerk (1970), pp. 244 and 245.

[3] Toynbee (1992), p. 19.

[4] Eugen Ehrlich first announced the founding of his institute and the pre-eminence of its research profile in the Vienna weekly *Juristische Blätter*. 'Ein Institut für lebendes Recht', and then extended his research in 'Das lebende Recht der Völker der Bukowina' Fragebogen für das Seminar für lebendes Recht mit Einleitung vom Seminarleiter – laying the foundations for his classic basic work on the sociology of law. See Ehrlich (1911a), pp. 229–231; Ehrlich (1911b), pp. 241–244; Ehrlich (1913).

[5] Pound (1910), pp. 12–36.

competition.[6] But I was also inspired by the idea of *living law* when I tried to interpret the possible practical and theoretical implications of the legal knowledge of a practice that had been informally requested and of the concept of law itself as a concrete pretext for the discovery of domestic legal custom[7] and, on the other hand, as a pretext for the attempt to make tips and gratuities subject to some form of legal regulation out of the grey silence that had hitherto prevailed. It was then necessary to add a third circle to the diagram of possible legal elements.[8] However, this trinity—that is, the domains of (1) *the establishment of law by the state*, (2) *its enforcement by the state*, and (3) the *exercise of 'law' in society*—expresses a historically generalizable reality whose simultaneity has not changed since then. Inherent in this formula was the fact that the activation of either side (including its timing, mode and degree) depends on historical contingencies. Any given state obviously has a definite legal policy with its own official preference for one of these, which it tries to enforce openly through the various instruments of its entire institutional system. However, the complexity of social movements never precludes the possibility that one of them may make its presence felt, even if it ignores or even obstructs the other two and even if it achieves temporary or long-term predominance, even in certain areas. For it can be assumed, so to speak, that in almost every single legal system, there will be at least some latent competition, albeit perhaps only in certain critical regulatory areas or fields. Moreover, in principle, either side can create a dominant position, which results in the other two sides being marginalized or temporarily excluded from the sphere of factors which actually have an impact or are even in an acute struggle for a dominant presence in the law as a whole, which can lead to real conflict, and which, to the contemporary observer, can almost be seen as a vision of anarchy.

Nevertheless, the above pictorial representation already assumes that law is a complex phenomenon resulting from the simultaneous and contradictory operation of several components, which can be deduced from its respective outcomes and may be concealed by formalized appearances, but behind which is a never-ending tension of opposites and contradictions. It follows from this that (a) our question of law is always a question of *'law, but in what sense?'*, that is, involves a choice between three possible components in one or another combination. It also follows that (b) these three circles will obviously coincide only partially in most cases, i.e. we may find a valuable coincidence between only two circles, or a certain range of legal rules may be the exclusive content of only one circle. For this reason alone, therefore, we cannot give a simple answer to the question 'What is law?' which might otherwise seem self-evident since interpreted as a totality, it could at most indicate the area that can be marked by the complete intersection of all three domains. At the same time, we can only ask a more precise question in the knowledge that some parts of the whole domain of law will be *'more' or 'less'* law. Finally, it also follows—since the formula of the competing circles is itself

[6] Varga (1973), pp. 21–78.

[7] For a theoretical-legal interpretation of Tárkány Szűcs (1981), see Varga (1985), pp. 39–48.

[8] Varga (1988), pp. 265–285.

nothing other than a symbol of the eternal (open or hidden) dynamism of law, of the competition between the three sides which in principle never ceases—that (c) a lasting final result or final state is never really arrived at. It is only the successive *states of permanent processes of change and metamorphosis* (i.e. at most time segments) that we may encounter at a given moment. For some parts are entering the domain of law, while others may be leaving it. So, any question we ask about law can, at most, be answered in concrete terms for a given temporal state.

Thus, regardless of the official image that the law may have of itself and regardless of the eventuality of the fact that the system of sources of law may also be fixed by the law itself, both the law (i.e. the law issued by the legislator in a specific procedure with specific formalities) and the law created in the judicial decision-making process (i.e. the law enforced in the interpretation, actualization and concretization of its relevant norms in application) are fundamental forms of the objectification of law.[9]

The *objectified form* of law is already only a mediation, or more precisely, a signal (set of signals) transmitting a mediation in human communication for *human understanding*. It is this human understanding through which we activate the law and with whose content we then enforce our decision. In short, it is the realm of the *hermeneutics* of law. Once argued forcibly within the official Marxism of socialism, I could only approach this idea wrapped up in the then slowly recognized duality of positivism and sociologism in law. According to this, (a) 'Law is a historical continuum in an unbroken process of formation'; (b) moreover, 'law is an open system [that] can only be treated as closed for the sake of its historical reconstruction', in which (c) its 'social existence [. . .] is to be seen as an irreversibly progressing process', the root of this being that (d) 'if law as a working system is composed of formal enactment and its social contexts that make it interpretable and set it in function, and if a change of any of its components may cause a change in the law as a working whole, there is offered a perspective for an *alternative strategy*. I mean thereby that a struggle for the law can be fought through a struggle to confirm/reform/revoke its *formal enactment* and a struggle to strengthen/reshape/loosen its *social contexts* as well, and that any of these alternatives can eventually lead to the same goal as set.'[10]

2 The Law and Its Changes

Change of law is the basic form of its life. Amongst the two forms of the objectification of law, legislative and judicial, this obviously takes place occasionally, step by step, with an infinite series of invisible changes in the meaning of the daily practice of each actualization, and a hermeneutic sense, too, with each legal action.

[9] Cf. Varga (2011).

[10] Varga (1984), pp. 181–182, lightly edited for clarity here.

Given its intellectual presuppositions and its context, the very fact that we rely on law and work to shape it continuously as dictated by circumstances presupposes *trust* in law—on the part of society, of the individual actors in the social complex, not least the legal profession. It is perhaps no coincidence that the classic twentieth-century comparativist in private law was at pains to remind us that 'a magical belief in the efficacy of the law in shaping human conduct and social relations [. . .] is a superstition which is itself a fact of political importance, but it is a superstition all the same'.[11]

Whether this is true or not, in any case, over the last half-century, from legal anthropology to the sociology of law, from empirical social sciences to social theory generalizations, there has been a huge investigation into the themes of 'law and society' and 'law and social change' and the like, to derive a more accurate picture of the dynamics of social movement and the interactions at work in it. Classical Greece, for example, was already aware that law and society had to change together for the *politeia* to maintain its capacity to evolve. But they warned against going beyond what was strictly necessary. For any *change* in the law (i.e. shift or progress) can upset the delicate balance that has just been struck and is therefore inevitably *disintegrative* from the point of view of the political equilibrium.[12] But today's literature goes beyond this and would prefer to make legal change permanent, capturing it in its very existence, as it were, in its mobilization. 'Change of law', it is argued, has an inherent double meaning: it implies the modification of a legal proposition and the need to adapt to the *constantly* changing circumstances of the time. Consequently, modernity today suggests that it must strive, even demand, that the law's uninterrupted change shall be a feature, an actual property, of the very continuity of law.[13]

Such a complex approach within social theorization is both natural and necessary since societal existence itself is a process, and since everything takes place in the complexity of social being, any moment or step is not only the product and result of interactions but also the consequence, source and resolution of tensions. This is in contrast, for example, to the vision of anthropology, where any change is clear from the replacement of the medium of sociality itself since the 'cultural pattern' that defines self-identity is for it the starting and end point of any investigation; consequently, any change is also a loss of identity and the birth of a new identity. In law, on the other hand, and thus in the jurisprudential vision as well, the situation is the reverse: the idea of change is inherent in the very idea of law. And there is a further difference here, namely that while 'The discipline of anthropology considers change in terms of rupture, [. . .] law must treat change as categorical redefinition.'[14]

There are a number of general statements about the change of law. For example, the precondition of the validity of a legal act, whatever the circumstances, is not only

[11] Kahn-Freund (1969), pp. 301–316.

[12] See e.g. Poddighe (2019), p. 184ff.

[13] Minow (1993), p. 179.

[14] Malagrino (2014), p. 118.

that it be *legitimate* and *legal*[15] but also, in principle, that its creation and content meet the requirements of *legal certainty.*[16] Such and similar expectations are mostly normative requirements, also laid down in legal policy, intended to be enforced within the law. However, they owe their strength above all to the fact that they are not based on an arbitrary determination of will or an excess of desire; they are dictated by the *reconstructible logic of the normative phenomenon* itself.[17] This is dictated by the very nature of the normative phenomenon, and it also determines its autopoietic description as the most succinct response: 'no social movement [i.e. external force, and in a direct way] [. . .] can change the law. Change is not possible except through the legal system itself'.[18]

Only 'through the legal system itself'? This seems to be a clear statement, yet it seems to contain several elements pointing in different directions. Legal change can be seen as the shaping of the textuality of law in both legislative and judicial lawmaking. Moreover, in both areas of the *textuality* of the law, on the user's side, understanding also appears as the formative element of meaning. As for the first possibility, the terrain of textuality, while we usually look for and perceive, or even plan, legal change in terms of formal rules, there are often principles behind the rules that are laid down and fixed in a particular way, and behind them, final and mostly latent, tacit meta-principles that activate our cultural roots by giving the community its identity.[19] However, they do not remain rigid and intact either, since they themselves are enriched (for example, by the superimposition of shifts of emphasis) with each concretizing step in the process of *reflective equilibrium*. The complexity of the law and its functional unity mean that *changes in the law are* never reduced to a single element; at most, their visibility and formal identifiability *in the chain of further action* is sharply reduced. Hence, in this complexity (in its source and in the way it exerts its effect—i.e. in its manifestation in the legal reference justifying a given legal statement and in its ontological existence as well), attempts to separate the different components of law as layers of a stratified complex (which is itself infinitely complex), what we usually call legal change is directly perceptible, so to speak, only in its most superficial component; in its propositional elements. Rarely, and of course, mainly through the intermediary of these, does it come to some further development within the hermeneutics of understanding and the general principles underlying it. And it is only in the vast intervals that may mark a change of era that

[15] 'Legitimacy is not an all-or-nothing affair.' Beetham (1991), p. 19ff.

[16] This is treated as a human rights obligation, for example, in Tryzna (2020), pp. 234–249.

[17] Cf. e.g. Varga (1994), pp. 3–27.

[18] Luhmann (2004), p. 119.

[19] In his last work, Dworkin, the recently deceased American classic scholar of our time, stated: '[L]aw includes not only the specific rules enacted in accordance with the community's accepted practices, but also the principles that provide the best moral justification for those enacted rules. The law then also includes the rules that follow from those justifying principles, even though those further rules were never enacted.' Dworkin (2011), p. 402.

the cultural embeddedness of law itself, i.e. the actual legal culture,[20] even undergoes some change and becomes perceptible.

The professional literature tends to refer, as *drivers/inhibitors of legal change*, to needs made aware, needs explicitly calling for generalized regulation, the political and legal professional force supporting re-regulation, and, in the background, the willingness of the society and legal profession concerned to innovate, learn, and even adopt foreign examples.[21]

And when we approach the issue not prospectively, from the point of view of the planned progress, but retrospectively, looking back on the results already achieved, the difference between the two main functions, already divided by the classical Greek predecessors[22] and the two corresponding sources of law, will become even more striking:[23]

Legislative type, law made by the legislator	Resulting from a judicial decision possibly becoming a precedent
will apply in the future	retroactive
of general application	case specific
striving for systematicity as conscious legislative policy product	is due to the accidental nature of the lawsuit
arises from a purposeful determination	can be made if and in a case where there is a party who wishes and can afford to sue
systematic in itself	asystematic
enables the development of the legal system	incapable of serving the development of the legal system
also helps to develop the underlying legal principles	precludes the development of legal principles
is based on the use of accumulated experience	has little, if any, relevant experience behind it
theoretically founded	taken without broad professional preparation
can be safely clear	the identification of the *ratio decidendi* will always remain debatable
free from casual emotions	may be influenced by the moral, social (etc.) motives involved in the case
suitable for immediate implementation of the change	with an impact indirect, slow, and random
can also lead to a leap in the development of law, a change of direction	its effect on the law's development is of minor importance and, at most, has indirect consequences
can be replaced with any repetition and/or speed	can only be modified under rare and limited conditions

[20] Varga (2021), pp. 191–219.

[21] Watson (1978b), pp. 313–336.

[22] Poddighe, especially, already distinguishes between formal legal change and informal adaptation to a given situation by popular decision or judicial review. Poddighe (2019), pp. 192–196.

[23] Described without tabular summary in Watson (1978b), pp. 323–324.

As for the possible effects of one or the other, it is a theoretical—ontological—truth that there is a long way from enacting any law to the triggering of any result thanks to the former act since there is no direct—causal or quasi-causal—mechanism of implementation in human society, only possible *chains of motives and effects* used. Hence, social beings can be produced or shaped in a way that teleological projections put causal lines in motion, which then, following their own laws, usually pass beyond the original project: in the final analysis, they give rise to phenomena more or less similar or dissimilar to the original intent.[24] In addition, and on the other hand, all this is flanked or even intersected by a mass of *coincidences.* And it is an old adage that the role of chance occurs not only in the form and success of the change of law but also in the result which it contributes to, even as a multiplicative *side-effect,* even as a multiplicative *spill-over effect*—naturally, completely independently of what was initially intended, but also of what was foreseeable even with the greatest care. In a certain sense, however, this kind of collateral, ex-post, indirect effect makes possible or even brings about most of the most significant changes in world history.

3 Understanding the Change of Law

Law is used as a regulatory force. Or, law is used to regulate something or change a previous regulation when the functionality of its social environment requires it, and requires it with such force that it needs recourse to law itself as a general and national-level regulation.

The change that takes place here is always a change of something—one or more components, but always *only a part*—on the grounds of the (at least momentary) immutability of the other elements of the environment, of the remaining whole.

3.1 Judicial Attempts to Loosen Mediation by Law

Already today, foresight suggests to several theorists that present law must be replaced by adaptive law in the future. This may be characterised by the following features: '(1) multiplicity of articulated goals; (2) polycentric, multimodal, and integrationist structure; (3) adaptive methods based on standards, flexibility, discretion, and regard for context; and (4) iterative legal-pluralist processes with feedback loops, learning, and accountability.'[25]

We do not yet have any data on the future of the reality of all this, so we can only resort to mapping the intellectual environment that is helping to develop it, safely

[24] Based on Lukács (1984–1986). See Varga (2012b), p. 218.

[25] Arnold and Gunderson (2013), pp. 10426–10443.

stepping backwards, seeking and interpreting its antecedents. Dating back centuries or even millennia,[26] there were already some thoughts *concerning resolving the mediation* inherent in legal mediation.[27]

My first personal recollection of their contemporary occurrence was

- an American theoretical proposal, enthusiastically received at the time, that would have pushed the framework of the justifiability of decision to a broader one, from the legal to the *directly social,* as much as sixty years ago;[28] then
- a decade later, a Swedish proceduralist would have gone somewhat further to broaden the normative debate into simple *open debate*.[29] But—I tried to clarify the basic position even then—since the law was born, its theoretical possibilities in this direction have remained unchanged: either I accept the *norm-structured patterning* of the processes of judgement and decision-making, or I reject this—and with it the instrument of law itself, i.e. the very meaning of its prevalence as a law, its core, its specific potential, its criteriality. I can do this, but in this case, precisely by withdrawing this very criteriality, I am inevitably withdrawing from law as a specific toolkit;[30]
- a few years later, Watson, the Scottish-American comparative legal historian came up with a reform idea specifically for the legislature, a proposal for a *two-tier legislature.* His idea was based on the fact that continental codification-oriented lawmaking builds a long, abstract system based on technical terminology far removed from everyday life, which, for lack of clarity, can only be applied in law while at the same time resisting any change by its abstract systemic generality. Therefore, the *first layer* of legislation should be a text that is short and accessible in everyday terms, with cross-references to the subject matter rather than the systemic focus. This would be complemented by a *second layer*, which would provide a systematic legal terminology for the first, by a committee (for example, set up within the Supreme Court) empowered by the legislator during his term of office to comment, clarify and adapt to social changes, and which would republish this work every year, with any changes it made in the meantime. And if there were a direct conflict between the two, the law (as *lex generalis*) would obviously prevail, except for the possibility of a second layer of detailed regulation, when the latter, as *lex specialis,* would prevail;[31]
- another few years passed, and two leading legal sociologists from the West Coast of America articulated the need for a so-called post-bureaucratic society and the

[26] Varga (1978), pp. 21–38.

[27] It is worth recalling that in the late social ontology of György Lukács, socialisation [*Sozialisierung/Vergesellschaftlichung*] is, so to speak, synonymous with social mediation [*Vermittlung*]: from this he derives the possible perspective of the growth of human formations into alienated powers that now may threaten man himself.

[28] Varga (1967), p. 197.

[29] Bolding (1969), pp. 59–71; Varga (1970), pp. 80–82.

[30] Varga (1981), pp. 45–76; Varga (2012a).

[31] Watson (1978a), pp. 552–575; Varga (1979), pp. 5–10.

corresponding need for a so-called *responsive law*—one that is sensitive in responding to changes in the environment, flexible, open, active, and based on broad participation.[32] It was a noteworthy step in intellectual development and in the increasingly acceptable assumption of the idea of a 'leap back' that what had previously been regarded as almost utopian was now explicitly taken into account as a desirable subject for *social planning;*

- another decade, and in Canada, the same began to be presented as the *socio-positivisme juridique* movement, inspired by post-modernist ideology;[33] and finally
- soon, almost in parallel, some positive legal facts were added; first of all, the new civil code of the French province of Canada, Quebec, was issued in 1991. Its basic philosophy is that, as a code of law, it is *binding* in principle in its entirety, while—as is its declared intention—it is constantly *being further developed* by judicial interpretation and application in everyday practice. And while this may appear to be a one-sided solution and may be seen as doing no more than taking up what was the inevitable fate of the once pioneering French *Code civil* (1804),[34] it nevertheless breaks with an old tradition, one that characterizes continental law, in that it has from the outset intended its rules not to pre-determine the decision in the process of applying the law, but merely to *mark out a course for responsible judicial creativity.*[35]

3.2 Lessons to Learn for the Future

In today's rage of legalism it is not exceptional to make such exaggerated generalizations and visions of the future, even as wish-driven projections onto the present, as 'the law is open *and* closed, formal *and* informal, *both* a unity *and* a disunity, *both* pluralistic *and* monocentric'.[36]

[32] Nonet and Selznick (1978); Varga (1980), pp. 670–680.

[33] Cf. Varga (2003), pp. 21–44.

[34] Varga (2011), pp. 120–121. Meanwhile 'from being master of establishing the law, the code became degraded primarily to a *conceptual-referential framework* of the everyday practice of shaping the law. It is no longer the embodiment, but rather a mere *reference-basis* of the living law.' Nevertheless, '[t]he code remains the Bible of bourgeois society, an *organizing centre of law*, despite being socially antiquated. It has remained the framework for legal movements as their formal initiating and precipitation point'. However, at the same time, '[i]nstead of providing a pattern for decision, its task is merely to indicate the *direction of finding* the solution, and to define its *conceptual-referential* place. Points, which were earlier the final outcomes of legal control by the force of the wording of the code, now appear to be the points of initiation.'

[35] Cf. Varga (2006).

[36] Gustafsson and Vinthagen (2013), p. 37.

In any case, while law is subject to influence from all sides in one way or another, its own influence can obviously multiply in a chain reaction and thus may go far beyond the directly perceptible terrain of concrete legal change.

Presumably, equally realistic content can be gleaned from the indications in the adaptive law idea just presented. In any case, its root should presumably be sought first of all in the awareness of increasing complexity and second in the *self-defeat of the formalisms* that have been constantly developed. For the *archetypes* of both versions in terms of the theory of organization clearly show the developmental arcs and their utopian slowness. For example, in the second variant—what its relevant literature calls complex adaptive systems, i.e. those 'in which large networks of components with no central control and simple rules of operation give rise to complex collective behaviour, sophisticated information processing, and adaptation via learning or evolution'[37]—the characterization is at once ambiguous and meaningless—but precisely because it reflects counter-radicalism. In other words, it is a rejection of the radicalism with which the formal rationality of regulatory systems has been fought for. But now that *formal rationality itself has become irrational* with the immense (over) development and predominance of this formal rationality, its overthrow, the elimination of the kernel of formalism, and thus its *material replacement,* is becoming the new fashionable rule.[38]

4 Legal and Socio-Legal Change: Conclusion

Legal change is not an end in itself but a means of maintaining an organic functional relationship between law and its social medium. In principle, legal change creates the possibility either of establishing this link or of promoting or accelerating the development of the social environment, which is recognized as desirable, but it is neither in itself a *sine qua non-prerequisite* for this nor a guarantee of such a link or development. For the relationship between society and law is not a mechanical one[39] but a series of different mediations expressed in complex interactions that activate human awareness, interest, and willingness to act,[40] which, 'as intervening in the complex of other activities, and as itself a social process, [are] not something that can be said to be done or to happen at a certain date.'[41]

The possibilities of law are limited because, in metaphorical terms, 'It is beyond the law to prevent ravages of time, weather and human apathy. All law can do is

[37] Mitchell (2009), p. 13.

[38] Cf. e.g. Varga (2011), ch. X para 1.

[39] Ringelheim (2013), pp. 157–163.

[40] Which was already Rudolf von Jhering's appeal-like message in his 'Der Kampf um's Recht'. von Jhering (1872).

[41] Dewey (2008), p. 117.

help, not cure [. . .]. A simple legislative solution is not available'.[42] And, of course, any change is in itself contrary to the basic function of law, which is to protect the status quo, i.e. to stabilize the system.[43] All in all, the road from legal change to the prospect of actual socio-legal change is long, complicated, bumpy, and not without risk.

And if we confront the two sides with each other, i.e. if we (also) seek the help of law to bring about a change that is progressive and interdependent in society, but at the same time firmly embedded in society—a programmatic version of which was the modernization programme[44] that was a Western parallel to the socialist reforms of the past–, then we can come to new conclusions, which, of course, were first formulated in macro-level studies of the sociology of law, largely as a result of earlier observations and experiences,[45] but which are now clear enough to serve as a counterweight to the commitments that see law in the ethos of permanent legal change. For according to them, (1) whatever we do in law, we must first and foremost, as the most important and most difficult instrumental value, build and safeguard the *prestige of law*; (2) we must be aware that social reforms are to be fought for by means of a *reform movement* consistently won from society, not by shortening the circle to the shortest element by means of a word of power and a simple legal doctrine from above; and, finally, (3) law is stronger the less we rely on it and the less we use it—that is, the more we consider it applicable only as an *ultima ratio* and in cases, even when considering its use.

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[42] Wallace (1978), p. 246.

[43] E.g. Wróblewski (1981), pp. 1–13.

[44] Thus the 'World Peace through Law' movement, which was a reaction to the Soviet threat of nuclear war in the 1960s, was replaced within a decade and a half by the emphasis on the 'modernization of law'. It is typical of the fashionable nature of the watchwords that in Harvard Library's collection of book titles, 'World Peace through Law' occurs only 144 times, yet there are 90/163 occurrences of the term 'modernization' between 1900 and 1950 (measured in 2020 and 2022), which were followed by 2800/4381 in the next half century, and 3600/5814 in the two decades from the turn of the millennium to the present.

[45] Cf. Varga (1986), pp. 197–215.

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