

By Ainomira M. Ilario<sup>1</sup>

This comment is about the importance of the work by Paul Scholten from a personal perspective. The Digital Paul Scholten Project<sup>2</sup> offers a digital treasure map where one can find not one but many treasures. I'm referring to essays by Scholten like *Recht en liefde* (law and love) and *Evangelie en Recht* (gospel and law). English readers can find a translation of one of Scholten's most famous works titled: 'General Method of Private Law', but also English essays about Scholten's ideas, like 'Jumping Judges: judicial discovery of the Law' by Niels van Manen. I have recently read *Recht en Levensbeschouwing* (law and philosophy of life), an essay written by Scholten in 1915.<sup>3</sup>

It was an article of Timo Slootweg about the esthetics of law, in which I came across the name of Paul Scholten.<sup>4</sup> In that article Slootweg offers a counterbalance to positivism by exploring the idea of renaissance and tragedy as a means of finding law in a more creative way. Through his reference to Scholten's ideas, I became aware of a side of Scholten's work that had not been apparent to me. In my further research on Scholten, I found out that many elements of Scholten's work did not get the spotlight they deserve by the legal order.<sup>5</sup>

I often think about the moral foundation in which our legal system is rooted and how philosophy attributes to its development. Where can the relation with the individual human being be found: is there a place for freedom? Individual freedom for those seeking justice as well for those finding (or applying) justice.

Many have striven to define the fountain of the body of law. In 1934 Roscoe Pound defined the body of law -from the common law perspective- as a body of authoritative precepts.<sup>6</sup> From our civil law perspective positive law is the -accepted- fountain: written and unwritten law based on authority. The question - for both systems- remains: who are the ones accepted as the authoritative figures and why? The answer is given by man<sup>7</sup>, the human being, the thinker.

However, who is man and in what state is 'man the thinker'? Do we have the correct picture of what man really is? In my quest for answers on the nature of man and his development, I have been studying the work of Rudolf Steiner for about seven years. This brought me to the realization that the human consciousness is -although not generally acknowledged- constantly evolving<sup>8</sup> and hence my attention is always drawn to alternative ways of cognition and solving problems, not readily accepted by the dominating majority. And I wonder what place there is in our legal system for a personal philosophy of life. Up until now, this has remained a very understated fact in my studies and practice of the law, and I was very happy to see how elaborate Scholten has dealt with this very same question.<sup>9</sup>

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<sup>2</sup> <https://paulscholten.eu/>.

<sup>3</sup> Find the concept English translation: <https://paulscholten.eu/vg-2-nederlands-bewerkt-versus-engelse-vertaling/>

<sup>4</sup> T. Slootweg, 'Over de esthetica van het recht: Tragedie en Christendom', *Tijdschrift voor Religie, Recht en Beleid* 2016 (7) 3, pp. 55.

<sup>5</sup> See for a concisely overview of the many sides of Scholten's work: W. Borst, 'Paul Scholten en de "Rule of law"', *R&R* 2004 no. 3, pp.299.

<sup>6</sup> R. Pound, 'Law and the science of law in recent theories', *Yale Law Journal* 1934 Vol. XLIII no. 4, pp. 525, available on the internet: <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3651&context=yjl>.

<sup>7</sup> I obviously refer to both man and woman, however I refer to man for the sake of simplicity.

<sup>8</sup> For an extensive overview about the evolution of the human consciousness including the worldview of Rudolf Steiner, see: J.M. Gidley 2007, 'The evolution of Consciousness as a Planetary imperative: An integration of integral views', *Integral review* 2007: A transdisciplinary and transcultural journal for new thought, research and praxis, no. 5, pp.4-226. The article is available in open access at Researchgate(PDF) [The Evolution of Consciousness as a Planetary Imperative: An Integration of Integral Views \(researchgate.net\)](https://www.researchgate.net/publication/312111111).

<sup>9</sup> I'm referring to the essay that is mentioned in the first paragraph: 'Recht en Levensbeschouwing'.

Hence the fact that the work of Scholten is important and refreshing to me because I find that it offers something more personal than mere positive law and explores other paths besides analogy and syllogism to find the law.

The work originated in a time in which humans were facing a multiple crisis.<sup>10</sup> It seems like we have been in perpetual crisis since then<sup>11</sup> and even before that, as it was a multiple crisis in the first place that led to the globalized wars man was facing in that period. Furthermore, I can't remember a time when the word crisis was not plastered all over the papers and not broadcasted from every medium thinkable. So, in that aspect too his work is still relevant. If we don't see man for what he really is, and if we don't reach for a higher ideology that will unite us on a plane past nationality and religion, we will not emerge from the crisis.

If I understood his message correctly, this is what he stood for, and I wonder if it could be the right moment for us as legal scholars and -practitioners, to explore and shed light on the side of his work that has remained in the shadows up to now.

For me it is the beginning of a journey.

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<sup>10</sup> WWI and WWII.

<sup>11</sup> Especially seen from the holistic (or global) point of view, where peace and wellbeing on one side of the earth can't be considered as achieved, if it means war and misery at the other side of the earth.