ENGLISH SUMMARY

PHILOSOPHY OF LAW TODAY

The author presents some results of the research he has been carrying on for the last fifteen years in the field of legal philosophy. In this contribution he offers in particular a systematic link between the two themes which are the core of his work: the theory of discourse and the theory of process.

In this article, the author ponders over the relations between his theory of justice and the so called exhaustive theories (religions, metaphysics,...) of the good. He trys to find the features making them compatible with the theory of justice.

Political liberalism is confronted to a paradox : it asks citizens to accept restrictions when appealing to the power of state in order to enforce their deepest convictions against those who refuse them. The author analyses and defends the liberal justification of the impartiality criterium in order to justify other people beliefs, notwithstanding their truth.

Rawls' theory of justice has already given rise to many critiques, and it still does. The most outstanding and best known are due to liberal thinkers. For a few years however, this tendency seems to be changing to the benefit of a new generation of philosophers, critical of liberalism and any individualistic thought. Gathering under the key concept of communitarism despite the great diversity and difference characterizing the structure of their thought, these authors 1) declaim particularly against the individualistic liberal conception of the subject of law et 2) argue for an « enlarged concept » of the subject of law. According to this concept, « community is the

constituting element of the subject of law ». This article dedicated to Michael Sandel, one of the main representative of this new tendency in anglo-american philosophy, tries to systematically assess « communitarism » from the viewpoint of what constitutes the main task of political philosophy.

Philosophy of law may be defined as an interrogation on what the very concept of law intellectually requires. Such a critical philosophy of law give back to law the central place it architectonically deserves in the heart of philosophical rationality.

The author offers a reflection on the natural character of certain fundamental forms of reasoning in different legal systems.

This paper is a critical examination of Ronald Dworkin last work, *Law's Empire.*

The aim is to show how Dworkin's Theory meets the requirements of the hermeneutical paradigm dominating the philosophy of law since H. Hart. For this purpose, the author analyses the controversy opposing N. MacCormick and A. Aarnio to R. Dworkin whose position is enlightened from being related to the philosophy of Jürgens Habermas.

The difficult and problematical relation between legal theory and legal practice may be analysed on two levels. Level I would consist in describing the process by which a fact becomes law and takes place in a legal system, by way of qualification. Level II would consider instituting the theory in a legal vision of the world, thereby confering it the role of a guide for practice.

The description of law as a system of cognition is opposed to the first « theories of legal systems » for the mere reason this description remains true to the philosophical principles underlying systemics in general. Afterwards is shown that the logic of this type of description corroborates the classical thesis of legal realism and jusnaturalism.

By taking Michel Foucault at his word : « all my books are little toolboxes », it is possible, from his works, to study the statements of legal knowledge as things that transmit themselves, repeat and transform themselves.

The purpose of this paper is to present the great lines of an archeology of legal knowledge as a method allowing to travel on the territory here delimited, defined and named penal knowledge.

This study tries to go deeper into the intuition of Bachelard according to which « the obstacles to scientific culture always come by pair » (« law of the bipolarity of errors ») by applying it to some of the main paradigms examined in the science of law : iusnaturalism and iuspositivism, subjectivism and objectivism, rationalism and iuspositivism, normativism and realism, hierarchy and circularity, monism and pluralism. The authors will try to demonstrate that, like Bachelard thought, these paradigms remain linked even in their opposition – which explains the blooming of intermediary and mixed conceptions. The authors also suggest that the only way to override the closure defined and reproduced by these paradigms is to adopt a third, dialectical route, that of the moderate external viewpoint, which, in its turn, gives birth to new paradigms.

In a continuity with its most ancient forms, the present positivism of a theory hostile to the metaphysical reflection and orientated towards the « structure » or the « system » remains associated with a new abstract law. This is mistakenly assuming that this law, taken in its objectivity, can be separated from the subject or the « underlying » to which the irreductible critical liberty of the person identify with as source of the authentic poietic creation.

MISCELLANEOUS STUDIES

While wishing a maximum of continuity and solidarity between the moral normative level and the legal level, Plato remains conscious of the limits of a superposition which cannot be anything but imperfect, however he does nothing but regret this fact.

The *nomima* of Antigon constitute a chapter to which legal philosophers are partial. Are they natural law ? Commentators are far from consenting on this point.

This papers aims at answering the following questions which may enlighten the specificity of natural law : which is the character of *nomima* ? Are they the real classical natural law or a natural law, once admitted several exist ? In the last case, what are the relations between *nomima* and the other natural laws ? Or is there only one natural law, basically polymorphic ?

In modern textbooks of french civil law, the theory of law is based on a paradigm quite differing from those structuring the various theories elaborated in neighbouring countries. Its specificity is due to the very particular cultural tradition of which it inherited and which is maintained by the authors in a paradoxical compromise with the technocratical spirit characteristic of contemporary law, in the empty hope to elude the constraints of the social and political environment. Giving more attention to the production of our neighbours would probably allow to enrich a french theory of law too steadfastly ethnocentric.

The fact that Kelsen maintains the logical impossibility of gaps in the law is really linked to a background of political ideology and rests on reasonnings ill-treating the ontology specific to regulations.

The human body, substractum of the person, is out of the trade. However, cut into pieces, used as a material, it is also becoming an object of industry, subject to the mechanisms of the market. In this movement from the person to the thing, is the law in a position to take into account the fantasmatic charge of the different parts of the human body ? The category of thing from human origin and of human finality would allow keeping a certain unity in the many statutes of the various products of the human body. The unity would be given by the absolute necessity of consent, the diversity would allow keeping some products completely out of any exchange, others in a non payed exchange, others in the market, etc.

This study takes anew a debate engaged in the *Archives de Philosophie du Droit* (t. XIX, 1974) and recently seen in the columns of *Le Monde* : does the indicative present have in imperative value in legal language ?

After examining the deontic terms which leads to the conclusion that the use is at the same time limited – not giving the Constitution a very normative character – and inequaly distributed between public powers, the article tackles the logico-philosophical analysis of normativity in order to show their contradictions and limits. Like purely grammatical or semantical analysis, the logical or philosophical approach is unable to take into account the plurality of meaning of the indicative present in so far as it abstracts from the language conditions of usage.

The second part show the essential role of the situation of communication as factor determining the meaning of statements. Hierarchy – social relations and discursive practices being intimately linked, a socio-semantical approach of the Constitution is proposed.

INTERNATIONAL CHRONICLES

CRITICAL NOTES AND REPORTS

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