ENGLISH SUMMARY

LAW AND SCIENCE

After the separation the Moderns established between "practical reason" and "theorical reason", the Contemporaries are engaging into a pragmatical reconstruction of deconstructed reason under the watchword of the "destruction of metaphysics" or of the "critic of instrumental reason". In relation to classical representations of philosophy, the concept of "reason" as well as the articulation of its differenciated features are then redefined in depth.

Confronted to the blosomming of sciences, a new metaethic appears necessary. It will basically require no to exaust the theoric knowledge possible at a particular moment and to refrain the technological powers stemming from it. Its normative force has to be proven during the societal debate in order to get legal consequences.

The author wants to interpret the notion of equity betweens generations, as it inspires today, in the context of ecological issues, the idea of a "sustainable development". This notion reveals all its implications when one tries to place it in the field of ethics and legal philosophy. The paper conclude that justice is owed to future: it is the just society itself that has to been "considered in time".

Law mainly takes risk into account either by distributing it upon a collectivity, or through prevention. The uncertainty inherent in risk leads to the use of statistical methods and to to new legal technics improving forcast. In any case, the regulation has to be reconciled with the respect for individual liberties.

If Law cannot devide between "truth" and "error" in sciences, it may however separate them by recognising to the "real" sciences a legal effectivity and by treating the "pseudo" sciences as a fraud. However, "pseudo" sciences not only reveal the imagery of "real" sciences, but also the source of the imagery of scientist: their power.

With the recent regulations on bio-medical research, the French law seeks to limit the freedom of scientific thought for the first time since the Revolution. To understand the justifications of these restrictions, the author has examined those who carry criminal sanctions and which, for this reason, he presumes to be the most important: either they aim at protecting the person of human beings born and physically viable, or they seek the welfare of children whose birth is made possible by advanced medical techniques.

However, neither the embryo nor the corpse, not even the genetic heritage of a human being are directly protected by French criminal law, even when they are the subject of specific statutory provisions.

For contemporary biomedical research, the question is not only of setting the scientific basis of an experimentation on living things, but also of establishing the conditions of possibilities of subjectivation of "corporal materials of human origin". A study of the arguments in favor of the experimentation on embryos of less than 14 days allows us to shade a light on the mecanisms used by scientific communication towards the political decision makers in charge of financing research programs. At the end of a minute analysis, we will thus discover the various ways opened by biology to though in order to represent the incarnation of a person. This tentative by scientists to found an ethic of experimentation on human beings on strictly biological criteria actually lies on the utilisation of a "negative psychology" which defines the conditions of a personalisation of corporal materials.

The sometimes difficult relationships between science and religions could constitute, wrongly or not, the archetype of the relationships between sciences and law. It is therefore necessary to study the way by which today religions apprehend the possibilities offered by sciences and technics. This paper shows the different methods of reasonning (casuistry or magister, use of sacred texts...) and indicates several solutions put forward in the field of biomedicine.

The notion of "quality of life" is in the air. The following reflections consider it from a medical stand-point ("health-related quality of life": H. Q. L.). For example, when treating chronic illnesses, it is not sufficient anymore to prove that a new curing process is efficient and deprived of toxicity. It has to be proven that with an efficiency and a toxicity comparable to that of the standard cure, the new treatment offers the patients a better quality of life. Not everyone likes this type of calculation. To schematise, loathing arguments from the quantity-quality of life type infer prefering moral theories of deontological inspiration (morals of duty) whereas using this type of arguments infer a preference for theories of utilitarist inspiration (morals of good or of happiness). If, in practice, each side ends very near the solution of the other side, it remains however that these are two different ways in their mind to confront difficult choices.

The aim of the recent EEC directive establishing copyright protection for computer programs is a balance between granting exclusive rights to the authors of computer programs and the free flow of ideas.

To grant protection to the authors and take into account the investment of financial resources: that is the intention of this EEC directive.

Introduction. I. — LAW AND METHOD: 1. The concept of law; 2. The concept of method and of science; 3. Relations between law and scientifical method; 4. Conclusions. II. — THE TRADITIONNAL LEGAL SCIENCE: 1. The legal language; 2. Understanding levels; 3. Conclusions. III. — Prospects and results: 1. Fundamental axiological positions; 2. Two levels of legal science; 3. General conclusions. Epilogue.

MISCELLANOUS STUDIES

The author shows that Hobbes' definition of liberty as lack of physical bounds is linked to metaphysical convictions but equaly to political standpoints, opposite to the antic tradition or to critics that some of his contemporaries addressed to the Rump Parliament.

O. Höffe's *Theory of Political Justice* aims at universal validity. Two main arguments supporting this claim are scrutinized. It is shown that the semantic analysis of "just" legitimates the moral point of view (the perspective of justice) only when based on a presupposition – human dignity – that is not thoroughly discussed. This also holds for the demonstration that ther is no proper definition of law without any reference to justice. Yet Höffe's theory stands its test as an outstanding voice in the secular process for human dignity.

Personal law makes an existential and differenciated principle come to life and it is given to the intuition of the mind. This is what separates it from any *volontary law* of positivist type; but it is also dissociated from a *natural right* thaht would declare itself autonomous and would suggest to man to become a character and be protected only in its assimilation to generalisable and theoretical patterns apprehended by reason.

The classical (greek) justice stem from a dialectical vision of cosmological things. In the frame of the *polis*, it comes from the didactic dialectic (Sacrate and Plato). It is linked to caution and belongs to the sphere of political science (Aristotle). Hellenic justice has an ethical nature because it searches the *kalon*: what is morally beautiful. Moreover, political science studies at the same time moral nobility and what is just.

The *dikaiosynè*concerns the *politès*, the member of the city, a member that participate in the history of the latter.

On the contrary, human rights concern an a-historical human being. Snuggly related to political ideologies, they will be recuparated by national protagonists of states submitted to slavery. We allude to Régas Phéraios. This greek hero gives a distorted interpretation of human rights in order to defend national causes : the liberation of Greece and other balcanic countries from the Ottoman empire. European kings were not in favor of a change in the *statu quo* in Europe. Thus human rights imply the idea that despotism cannot be eternal.

In the notion of system, when related to Law, remains some ambiguity, for lawyers do not always distinguish between the supposed systematicity of Law itself and the systematic order that the scientific knowledge of law tries to impose on its object.

This is why the paper of van de Kerchove and Ost on "the" legal system opens interesting perspectives in order to clear certain unspoken presuppositions which

must be discussed concerning their reach and consequences. The thesis put forward in the article is that the so-called requirement for systematicity is no more than a contingent requirement that lawyers can state while elaborating theories on a certain objective law or the expression of a dualist ideology, recurring among lawyers.

According to the law enacted on january 3th 1968, an insane is bound to compensate civil damages (art. 486-2 of the french civil code). Such a compensation cannot be legally founded on subjective responsibility, which requires a fault (art. 1382 c. civ.) but on objective responsibility which discards imputability. Applying objective liability to civil damages due to the insane, without any subjective consideration, makes his responsibility heavier and his compensation more severe than that of the normal subject. Even if it is true that both regimes of liability coexist in French law, the choice of objective liability over subjective responsibility does not justify itself right away. This bring out a feeling of inequity and furthermore, the text that was meant to reestablish some form of equity was, in this particular case, pushed aside.

It is then possible to ask if the recent liability of the insane in civil matters is still a "compensation". If it is not the case, and if compensation is not anymore the primary goal of article 486-2, is the liability of the insane, which became an end by itself, not, through a specious normalisation, the desire to purely and simply deny madness?

TEXT

INTERNATIONAL CHRONICLES

CRITICAL NOTES

REPORTS

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