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REVIEWS

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Rechtssystem und praktische Vernunft - Legal System and Practical Reason.
Stuttgart, Fr. Steiner Verlag, 1993, 313 p. (ARSP, Beiheft 51, XV Weltkongress der IVR, Göttingen 1991)

Beiheft 51 of the *Archiv für Rechts- und Sozialphilosophie*, edited by Robert Alexy and Ralf Dreier, collects the plenary and open lectures, as well as 28 papers presented in diverse working groups, of the 15th IVR (Internationale Vereinigung für Rechts- und Sozialphilosophie) World Congress held on 18-24 August 1991 in Göttingen, Germany. It is the first of four volumes consacrated to the Congress. In view of the heterogeneity of the articles it encompasses, the title of the Beiheft should be construed as an umbrella-topic, rather than the expression of a single problem orienting the papers. In fact, only U. Penski's paper explicitly takes up the relation between practical reason and the legal system as its proper subject-matter, attempting to explain and determine it from the perspective of the concept of freedom. Thematically, the contributions can be grouped under six general headings:

(1) *The Analytic Tradition in Practical Reason.* R. Martin criticizes a recent development in G.H. von Wright's theory of practical inference, namely, 'understanding explanations', concluding that the schema of practical inference is a causal principle and that it is nomological in character. Building on the distinction between the effects of the intention to act (autonomous effects) and the effects of the action, M.H. Robins explores the question whether it is rational to carry out strategic intentions. J.P. Sterba argues for a concept of morality as a nonarbitrary compromise between self-interested and altruistic reasons. Against R.P. Wolff's well-known argument in defence of anarchy, an argument that finds support in Raz's concept of an 'exclusionary reason', G. d. Hartogh contends that inasmuch as the concept of authority implies content-independent reasons to be taken into account in the individual's assessment of the balance of reasons for an action, it does not require any surrender of judgment and loss of autonomy. A. Conte, for his part, considers a distinction between the deontic and the 'anankastish' ought.

(2) *The Rhetorical Tradition.* Building on the well-known distinction between rationality and reasonability, J.L. Bazán and R. Madrid essay rehabilitating the idea of rationality such that it no longer functions as an a priori dogmatic postulate, but as a condition of consensus. The development of the Marxist doctrine of the State makes clear, in W. Schreckenberger's opinion, that an answer to social problems must not be searched for in highly dogmatized universal ideologies, but in a pragmatic disposition to an experientially concrete argumentation, permanently open to revision.

José Llompart considers the argumentative character of practical reason in respect of the concept of human dignity. The exploration of certain legal strategies unfolded in Brazil leads J.M. Adeodato to substitute the weaker concept of practical regularities for practical reason.

(3) *Reconstruction of Philosophical Discussions of Practical Reason* J. de Sousa e Brito essays a reconstruction of utilitarianism to determine whether the principles of utilitarianism can be considered as principles of practical reason in the Kantian sense. K.A. Papageorgiou explores the treatment of legal moralism in Kant's applied legal-philosophical texts in view of an assessement of the more general question concerning the alleged liberalism of Kant's social and legal philosophy. A cursory contrast of Onora O'Neill's reconstruction of Kantian practical philosophy and Alisdair Mac-Intyre's critique of Enlightenment rationality, is the substance of A. Zweig's essay 'The Limits of Reason'.

(4) *The Modern - Postmodern Debate.* In an irate article, V. Black argues that by presupposing that law is a front for the coercive power of the strongest, de-constructionism in law contradicts the three essential criteria of law, namely, practical reasonableness, the distinction between law as general rules and as politics, and the principle of an ever-present incompleteness and imperfection in law. In substitution for a determinate and final utopian project that brings history to an end, W. Eichhorn defends the notion of an historical process conceived as the ideal projecting that sets continuously new ends on the basis of concretely given possibilities. In an attempt to dynamize the blocked controversy between Lyotard and Habermas, U. Fazis pleads for a modification of Lyotard's *différend* in the direction of a relative heterogeneity, and of Habermas' universal consensus in favor of a claim to localized consensus-formation. C.W. Maris outlines what he calls a 'philosophical oratorio', wherein Lucretius' *De rerum natura*, the *Anti-Lucretius* written by cardinal de Polignac in the 18th century, and the author's own Syn-Lucretius represent conflicting views of reality characteristic of modern times. Finally, V. Held contrasts an 'ethics of care', with its focus on caring and its sensitivity to the array of moral considerations in personal relationships, with the dominant 'ethics of justice', centered on individual rights and interests and on abstract rules of justice and equality.

(5) *Human Rights* M. Kriele argues that the universality of human rights rests on the conjuntion of two factors, namely, human nature that experiences the absence of rights as unjust, and the inception of the modern state with its monopoly on power and law-giving. Considering the separate criticisms of Comunitarianism and of Critical Legal Studies on human rights, H. Kapitein argues that human rights do not depend on the liberal rule of law, but can be grounded on a minimal but fundamental conception of human equality together with general facts concerning minimal necessities of life.

(6) *The Principle of Universalizability.* In addition to the plenary lecture by R. Alexy titled 'A discourse-theoretical Conception of Practical Reason', F. Galindo, in an essay concerning the theory of social systems as a theory of legal praxis, and J. Wetlesen, who attempts to justify equal dignity and basic rights from a discourse ethics perspective, defend varieties of the universalizability principle as the criterion of practical rationality. H. Tolonen qualifies the universalizability thesis, by adding to its discursive interpretation a principle of material universalizability that envisages the coherence of values. The thesis of universalizability is assailed from diverse angles. O. Weinberger rejects the claim that there are rational methods for the determination of morally correct and objectively valid values. For his part, V. Petev argues for the criterion of acceptability as a substitute for universalizability. J.P. Rentto criticizes discourse ethics, arguing that in genuinely practical judgment the outcome is a particular action, and that the criteria of its rightness are equally particular. For his part, F. Jacob argues that the rationality of politics and law are a precarious 'meta-rationality', interpreted as strategies to deceive a more fundamental irrationality.

Additionally, the Beiheft includes three contributions that don't easily fit into any of these thematic headings. The first, by R. Summers, outlines the findings of the Comparative Statutory Interpretation Project. M. Yasaki explores the relation between positive and natural law in the perspective of the traditional distinction between art and nature. Finally, G. Skapska puts forth five theses concerning law as an object of social aspirations on the basis of a consideration of the 'lawful revolutions' in East Central Europe.

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