

## BOOK REVIEW

Conceptions Contemporaines du Droit / Contemporary Conceptions of Law / Zeitgenössische Rechtskonzeptionen. Proceedings of the 9th World Congress of the IVR, Basel 27.8 - 1.9.1979, edited by Paul Trappe. ARSP Supplementa Vol. I, Parts 1-4. Wiesbaden, Steiner, 1982-83 (pp. xiii + 702; xiii + 558; xv + 710; xiii + 625).

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Browsing through these hefty volumes is a rather disconcerting experience. These are no books to read. Who can digest 2.600 pages of legal theory within a reasonable span of time? It is more like walking through a supermarket. Commodities are presented in incredible variety, and each of them in at least five different brands. Just as in a real supermarket, there is no discussion. Each article presents itself as favorable as it can, no comparisons should be made and nobody thinks of asking his fellow shopper why in heaven's name he prefers matches of brand X. Everybody is absolutely free to take whatever he likes. There is only one difference. In this intellectual supermarket you do not even have to pay for the ideas you have chosen before leaving. Buy now pay later. But what is philosophy without discussion? Was not dialogue the essence of philosophy from its beginning? What is the use of this endless display of ideas presented one after the other?

Apparently the organizers did their best to bring some likeness of order into the display. There are four themes (analytical jurisprudence, oriental theories of law, marxist theory of law, natural law), each with one parallel session and six complementary themes (structure of the legal norm and argumentation, law and social reality, standards preceding law, fundamental principles of law, present trends and individual points of view, philosophical aspects of particular problems of law). But naturally one cannot expect that related themes are in fact to be found together in one chapter.

If anything, these volumes prove that we live in a pluralistic world of ideas and values. But not only that. The debate between various schools of thought seems virtually to have come to an end. Is such a big international congress merely a gigantic ritual, or is it a meeting of the shareholders of the society for the mutual assurance against insignificance? Here you find all the trends side by side: natural law versus positivism and beyond, analytical philosophy of law, systems theory, deontic logic, social scientific study of law, catholic, protestant,

marxist, islamic and buddhist philosophy of law. No effort is made at common understanding. For instance, the muddle caused by the careless use of the word "positivism" - to refer to at least five different things - is, if anything, only greater after reading these volumes. Similarly, the variety of "marxist" theories vel quasi has increased beyond the hope of convincing anybody but the believers. Apparently, there is no way to measure progress in legal philosophy and so it remains a free for all. Each and every outworn nineteenth century idea finds its advocates in these pages.

So I can only do what customers in a supermarket do: pick some articles which may seem useful for my purpose, that is, for the readers of a journal dedicated to legal pluralism and unofficial law, and report what I found. Legal pluralism is indeed on the agenda of legal philosophy, although, judging by these volumes, it is not a subject of central concern and very little progress is being made as regards its theoretical elaboration.

Kamil Fabian, "Soziopolitische Probleme des politischen Pluralismus" (I, 283 f.). This is a rather grim exercise in staunch marxist scholastics. Pluralism is an invention of the capitalist devil; Popper's falsification principle and critical rationalism are the essence of social democracy; the achievements of modern science in space travel and atomic energy prove that theories of philosophical pluralism are unscientific; modern discoveries confirm the unity of the systems of nature as well as (?) the specificity (?) of social systems and political leadership. And naturally all is for the best in the great socialist fatherland. I cannot help feeling something like substitutive shame.

Severin A. Ozdowski, "Law as an instrument of social change: divorce law and the stability of marriage in Australia" (II, 177 f.). This is a nice case study concerning the effectiveness of legislation. In 1975 a new Family Law Act came into force in Australia. It was meant to "buttress rather than undermine the stability of marriage". A year later the number of divorces had gone up by approximately 160%. The author elaborated an interesting research model, including a series of assumptions concerning the relation of social and legal normative realities. Legislation can certainly be more or less oppressive, but obviously it cannot influence the occurrence of marital breakdowns.

Eugen Buss, "Das Recht als Teilsystem der Gesellschaft; eine Betrachtung aus systemtheoretischer Perspektive" (II, 213 f.). This is a verbal exercise of systems theory of the Luhmann-type. It poses no operationalizable hypotheses, nor does it make use of available empirical data. As if there were no data on primitive

societies, Buss speculates, much like eighteenth century natural law professors, from the assumption that primitive societies are undifferentiated and evolution is towards ever greater differentiation, which implies differentiation of the legal system with regard to other social systems. Apart from complex verbalisation, Buss's theory does not get far beyond Von Savigny's. I really do not see the use of this. Maybe this is philosophy.

Stanislaw Ehrlich, "On pluralism of normative systems" (II, 225 f.). Although Ehrlich's evolutionary framework is as obsolete as that of Buss, the article itself is more interesting. Primitive societies are characterized by normative monism, comprising social, legal, moral and religious norms. In ancient civilisations, too, religious, moral, customary and legal norms formed a coherent whole. Apparently Ehrlich has never heard of that highly autonomous, highly secularized, highly technical legal system called Roman law: secularisation is believed to begin in the seventeenth century. But apart from this, the article presents an interesting analysis of some trends of thought leading to modern conceptions of legal pluralism, especially in the work of Von Jhering, Petrazycki and Eugen Ehrlich.

Neil MacCormick, "Coercion and law" (II, 259 f.). Since coercion still plays an important part in definitions of law by anthropologists (Radcliffe Brown, Hoebel, et al.), it is useful to mark this nice piece of analytical philosophy, proving that law is not essentially, though it may often be in fact, coercive.

Peter G. Sack, "Law as a variable; some thoughts on legal pluralism" (II, 293 f.). This is a discussion of the major issues implied in the concept of legal pluralism. Sack gives an interesting analysis of the reasons why legal pluralism is rejected by most jurists and he discusses the prerequisites of a pluralist theory of law. Although he seems to be ignorant of the considerable body of literature on legal pluralism and although his essay does not represent a major advance in the theory of legal pluralism, it is certainly worthwhile.

Richard A.L. Gambitta, "Differing realms of 'the law'" (IV, 201 f.). The title of this essay is nearly identical with that of a well-known essay of Paul Bohannan ("The differing realms of the law", 1965) which the author, quite surprisingly, does not seem to know, although he is familiar with a considerable amount of literature on anthropology of law. The author first distinguishes two notions of law: law in the textual and in the existential sense. Next, he distinguishes three levels or realms of the law: technical, formal and informal. There are considerable differences between the law at these levels, as well as regarding

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the relative importance of law in the textual or in the existential sense at each level. Only when we take account of the complicated interaction between the various levels, we can understand the complex nature of law in the modern world. Although the choice of the three levels seems a little haphazard, this is an interesting, if not wholly satisfactory, effort towards a more realistic theory of law, which goes a long way toward accounting for phenomena of legal pluralism. It is striking what a central role is played by citations from Von Savigny (1814). In fact, Gambitta's essay belongs to a tradition of theorizing about the relation of law and society which goes back to the Historical School. That is, it is essentially a jurist's theory of the relation between law and society. However much of social reality Gambitta is prepared to accept as law at the informal level (and this is no doubt much more than Von Savigny would have dreamt of) the general perspective remains juristic and cannot avoid becoming ideological in the end: "Generally, all three levels are operative at once, with varying degrees of impact; and in the effective legal system their forces converge, structuring the populace to orderly interaction." In last analysis orderly society is a function of the law! And so be it.

John H. Crabb "Le droit occidental comme justice mondiale" (IV, 355 f.). This article must be noted as an amazing example of western ethnocentric thinking about law and development. Law is a "cadeau" of the Romans to the world, and occidental law, as developed from that, has a universal quality, which will make it triumph all over the world. This is essentially the same argument with which Roman law was defended in vain in the era of Enlightenment: Roman law as ratio scripta. The fact that (to name only one instance) Islamic law is a reality - and one with growing impact - for hundreds of millions of people on this planet, is ignored with supreme arrogance. I once believed that it was no longer possible to hold such obsolete views in good faith, but apparently they still are alive and kicking. These too count among the Contemporary conceptions of law / Conceptions contemporaines du droit / Zeitgenössische Rechtskonzeptionen.

I confess that the collection of pieces I picked from the shelves of the supermarket is not very impressive. I would not dare to say that it is representative of the whole assortment. That is one thing no single customer will ever be able authoritatively to decide, which is why supermarkets continue to exist. So I will do like a customer and keep my thoughts to myself.