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W. SCHRECKENBERGER, Chr. STARCK (Hrsg.)
Praktische Vernunft, Gesetzgebung und Rechtswissenschaft.
Stuttgart, Fr. Steiner Verlag, 1993, 223 p. (ARSP, Beiheft 52; XV Weltkongress der IVR, Göttingen 1991, Bd. 3, vol. 3).

Beiheft 52 of the *Archiv für Rechts- und Sozialphilosophie*, edited by W. Schrekenberger and Ch. Starck, collects a plenary lecture and 25 additional papers delivered in the proceedings of the 15th World Congress of the IVR in Göttingen, August 1991. Rather than a comprehensive and systematic analysis of practical rationality, the concept is approached from different perspectives: in its relation to legislation, legal science, environmental issues, and ethics of the media. I follow hereafter the thematic division of the editors:

(1) *Legislation: Plenary Lecture and Principles of.* M. Atienza's plenary lecture applies N. Bobbio's distinction between a 'strong' and a 'weak' sense of practical rationality, distinguishing 5 levels of rationality --the linguistic, the formal-legal, the

pragmatic, the teoleological, and the ethical-- to then map out the specific contribution of each to the legislative process. Ph. Gérard discusses the majority principle in its relation to the requirements of democracy, namely, equality and collective autonomy. Rather than a 'realistic approximation' of a rationally achieved consensus (Habermas), the majority principle is justified by reference to the impossibility in principle of reaching such a consensus and the need to institutionalize the tentative and conflictive character of political decisions. In an analytical perspective, H. Häyry discusses the question whether legislators can be justified in exercising coercion, control or constraint in the best interest of the destinataries of said measures, in violation of the latters' autonomy, and without a prima facie justification thereto ('strong paternalism'). Exploring twelve types of rationality, the author concludes that none of them justifies strong paternalism. Drawing attention to the objective and subjective conditioning factors of the decision-taking processes in law-making, K. Wójcik discusses the evaluative expressions introduced to legal texts by the legislator, including general clauses in jurisprudence, scientific, empirical and juridical aspects of knowledge.

(2) *Legislation: Transformations in the Former Socialist Countries.* I. Ceterchi considers the revolutionary process of 1989 in Rumania in its implications for the concept of a democratic and social state of law, in which the author sees the expression of fundamental and universal human values. A. Gerloch provides an account of the basic features of the state of law (Rechtsstaat), the key aspects of which are legality, effectivity, sovereignty, legal institutions, and human rights. N. Nenovski both contrasts and links the years 1789 and 1989, seeing the latter as an historically late confirmation of the former and interpreting the socialist years as an interruption within a more massive historical teleology that finds its universal principle in the state of law. Rather than a directly legal-political reflection on the significance of this transitionary period, S. Wronkowska suggests that the 'Polish case' during the socialist regime can provide a useful example of the difficulties encountered by a strictly instrumentalist interpretation of legislation and the doctrine of legislation.

(3) *Legal Science: Kelsen and Positivist Theories.* In the *Allgemeine Theorie der Normen* Kelsen relinquished the thesis that norms were subject to the rules of logic and could be derived from other norms. M. Hartney argues that, although this move was motivated by the recognition that a logic of norms would conflict with the view that norms can only be created by duly empowered authorities, it rests on confusing a norm-as-a-particular-entity with a norms-as-a-sentence-meaning. K. Opalek discusses the relation between the static and dynamic normative systems in Kelsen's legal theory on the basis of a deontic logic. Against Radbruch's critique of the role of legal positivism in the Third Reich, W. Ott and F. Buob argue that positivism had already lost importance during the Weimar Republic, due to Bismark's radical reform of the

judiciary, and that the legal positivist viewpoint would have led to opposing the most aberrant of Nazi legal practices. The legal conceptualization of 'blasphemy' serves as the point of departure, in K. Goodall's paper, for contrasting Western legal systems with that of Iran and testing the suitability of autopoietic systems-theory to deal with their differentiation. Drawing on the distinction between theoretical, practical, and poetic sciences, N. Intzessiloglou offers a description of the field of legal science, organizing it on the basis of the concept of an 'open system'. M. Rodríguez focuses on the legal normative implications of the concept of a legal system, contrasting it with the views of Begriff- and Interessenjurisprudenz. L. Morawski and A. Molter criticize the concepts of autopoiesis and reflexive law; on the one hand, the thesis of the operative closure of law is contested by reference to the function of legal principles, general clauses, and legal interpretation; on the other, the autonomy of subsystems and organizations, which rests on the distinction between 'steering' and 'frame conditions', does not guarantee the autonomy of individuals.

(4) *Legal Science: Rationality.* R. Caracciolo's contribution centers on a discussion and reformulation of the paradox of liberalism, examining the functions of the constitution in the background of the incompatibility of the democratic principle of majority decisions with the respect of individual rights to action. The hard core of legal positivism, in M. Roumeliotis' opinion, is the distinction between law and the science of law (construed as 'objective knowledge'). This presupposition leads legal positivism to systematically suppresing the political dimension of law, an implication which the author holds to be ideological. By way of the conceptual polarity justice - coherence, S. Urbina's paper explores the concept of legal rationality, contrasting the different requirements it poses in respects of judges and legal dogmaticians. Finally, K. Wikström relativizes the division of legal science into its dogmatic, theoretical, and historical aspects by discussing what he calls an 'historical legal dogmatics'.

(5) *Practical Reason and the Environment.* In M. Häyry's opinion, the Aristotelian concept of a practical syllogism makes possible an amoral analysis of reasons and motives for action, a claim which is exemplified with a syllogistic analysis of an individual's decision to protect the natural environment. In what, frankly, is a higly scattered and disorganized presentation, L. Lukaszuk makes a series of remarks on legal aspects of sea and marine life protection. F. Ost discusses four figures by which to conceptualize humankind's relation to nature. The first two, the 'laissez-faire' and regulatory attitudes, coincide with the liberal and welfare states. The third, a contract with nature, is rejected in favor of a fourth figure, responsibility. Within the framework of a theory of communicative rationality, P. Swan argues that environmental rights can republicize a debate that tends to become privatized by the tactic of closed processes of environmental negotiation. Carrying further J. Rawl's discussion on intergenerational equity, H. Ph. Visser 't Hooft explores its applicability to an ethics of sustainable development.

(6) *Practical Rationality and the Media.* B.M. Leiser's contribution to this topic is skeptical of the possibility of settling conflicts deriving between the principle of freedom of the press and the right of privacy by recourse to practical reason. In support of his view, the author discusses several important decisions of the American judiciary. P. Schiwy's paper, dedicated to the question 'What can law contribute to an ethics of the media?', successively examines the role of the media, of journalists, of the public at large, and of law, before arguing for an 'ethical minimum' as the foundation of law in its relation to the media.

H. Lindahl