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SUMMA

RECEPTION AND THEORY OF LAW

Lajos Cs. Kiss

This study lauds Professor Csaba Varga's life-work from the point of view of the reception of the European and Hungarian tradition of legal philosophy. The central problem of Csaba Varga's life-work is the attempt to eliminate the consequences of the intellectual trauma and breakdown caused by the monolitic socialist state at its totalitarian stage. This became his programme of research and his main scientific goal. His programme of research was formed by the intellectual warfare of a lifetime against the socialist normativism and naive positivism of the era and manifested itself in numerous monographs and studies. He intended to decide this competition by the reception of the tradition of the Euro-Atlantic and Hungarian legal philosophy, as well as the elaboration of the legal theory of the synthesis in a social theoretical context. The external (Carl Schmitt, Hans Kelsen, Herbert L. A. Hart) and internal reception of the legal philosophy facilitated a lucrative collaboration with Csaba Varga. The results of this collaboration are presented in the second part of this article.

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PRACTICAL PHILOSOPHIES AND THE PHILOSOPHY OF LAW: SOME THOUGHTS ON THE RENEWAL OF HUNGARIAN LEGAL PHILOSOPHY

János Frivaldszky

In the last three decades, St. Thomas Aquinas has been rehabilitated by 'neo-classical' natural lawyers. They did so within a peculiar framework of moral and political, that is to say, practical philosophy. Certain exponents of that current also draw on H. L. A. Hart's intellectual heritage. Unlike the former, the post-modernist conception of law, based on certain leftist and libertarian philosophical traditions on the one hand, and on existentialism and pragmatism on the other, regards law as the emancipatory social practice of justice, which therefore has a political function. Thus, practical approach, broadly understood, seems to be dominant in contemporary legal thinking. In our opinion, however, it is not the analytical current of practical philosophy that should be followed, but a continental one that has classical (ancient and medieval) roots and is able to reconstruct their spirit in terms of both the form of dialectical thinking and the contents of classical natural-law thought. In light of this, the following claim

concerning today's philosophy of law may be formulated. Practical philosophy, hermeneutical understanding, the questions of justice, and dialectical argumentative logic all have to seek what is (probably) true in the sense of natural law, i.e. to the nature of things and relations, even in rhetorically oriented legal discourses based on opinions and appearances, which are open and therefore always indeterminate in their outcome.

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DIE EINENGUNG DER WISSENSCHAFTLICHEN DISZIPLIN VON RECHTSTHEORIE IN UNGARN WÄHREND DER SOWJETISCHEN HERRSCHAFT

Béla Pokol

Die allgemeine Rechtstheorie als theoretischer Wissenschaftszweig des Rechts war vor dem Sowjetzeitalter zusammengeflochten mit den theoretischen Teilen des Privatrechts, des Strafrechts, des Verfassungsrechts und mit den Forschung der grundlegenden Tendenzen der Rechtsgeschichte. Nur die Schwerpunkte der Forschung der Rechtstheorie wurden von diesen Teile der Rechtswissenschaften differenziert aber sonst mussten sich die Rechtstheoretikern parallel mit den rechtsphilosopischsen Fragen auch mit den theoretischen Fragen des Privatrechts, des Strafrechts usw. beschäftigen. Dieses weite Forschungsgebiet wurde in dem Sowjetzeitalter in allen osteuropäischen Ländern eingeengt und die Staats- und Rechtstheorie wurde von den anderen Rechtswissenschatszweigen vollkommen isoliert. Die Rechtstheoretikern hatten Kenntnisse über die einzelnen Rechtsgebiete und über die Rechtsgeschichte, die von ihnen erst als Studenten gesammelt wurde, aber sonst beschäftigten sie sich nie mehr mit den theroetischen Fragen des Privatreccts, des Strafrechts usw. und sie lasen die immer neuere Bücher und Aufsätze dieser Gebiete nicht. Auf diese Weie konnten sie aber auch die rechtsteoretischen Fragen nicht adekvat verstehen und forschen und die rechtstheorietischen Bücher dieser leer gewordenen Disziplin wurde für die anderen Zweige der Rechtswissenschaft überflüssig. Nach dem Zusammenbruch des Kommunismus wurde dieses Problem nicht vollkommen beseitigt, obwohl einige Schritte in Richtung auf die Ausweitung der rechtstheoretischen Forschungen in Ungarn getan wurden. Der Aufsatz versucht, diese Schritte zu zeigen.

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SEARCH FOR THE TRADITION OF THE HUNGARIAN LAW PHILOSOPHY

József Szabadfalvi

The final 'attempt' was made to Hungarian traditions of legal philosophy by Imre Szabó's volume *The bourgeois state and legal philosophy in Hungary* published in 1955. This 'critical' approach as a result of the mentality of class fight have determined the dogmatic starting points for about thirty years whose acceptance has

only provided access to the above mentioned authors and their theories. Marxist legal theory of the Soviet type was not concerned with traditions, which was regarded as unvaluable. The mid-1980s signalled the revival of Hungarian legal philosophy. By this time the Soviet type Marxism has lost ground in legal philosophical literature. Further confirmation of the previously unquestionable paradigms have not put researchers' existence into risk any longer. For jurists concerned with legal theory, it was only a choice of values to decide which paradigm would be fundamental for them. One of the forms of finding new ways was provided by studies in Hungarian traditions of legal philosophy before the year of change, which were carried out by the concerned researchers still alive and the younger generations who view this kind of tradition as a neglected value and take responsibility for the rehabilitation of their predecessors' work.

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TRADITION AND JURISPRUDENCE

Miklós Szabó

One of the main topics in Hungarian legal theorizing during past twenty years has been that of tradition. There is nothing surprising with it. Great historical changes, transitions, like the political transition of 1989 in Hungary, put the question of transition in the centre. This background explains the fact that nearly each research community in jurisprudence or theory of law has been trying to reckon with smaller or larger pieces of our tradition in legal philosophy.

The contribution offers an overview of the efforts of reckoning in Miskolc. It claims that reckoning cannot be sheer account, on the contrary, it should be a reflective elaboration of our past. Our elaboration was to compose different elements: 1. the "transition in jurisprudence" i.e. breach with Imre Szabó's critique on pre-war Hungarian legal philosophy, inspired by communist political ideology; 2. the act of "rehabilitation" of the same pre-war tradition, leading it back into present discourse in legal philosophy; 3. the act of "declaration" – the declaration that we identify ourselves with the best results of this tradition.

As a matter of fact, the tradition is not homogeneous and not unchangeable; it is a living organism which has to be transplanted into our present day discourses. That is why the writing offers a "living together" and "living by" our tradition.

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CHANGES IN THE UNDERSTANDING OF LAW
(The Last Decades of Legal Philosophising in Hungary)

Csaba Varga

Half a century ago the author started legal philosophising in the context of law / language / logic / rhetorics, approaching his subject within human understanding

incessantly re- and transconventionalised through varying sets of mutual effects. From problematising on that law is objectified, on the one hand, and its ontological existence (i.e., prevalence) is assessed by the facts of its being referred to and of the latter's actual impact on the course of events, he then concluded to the law's simultaneous opennes and closedness in autopoiesis: law is a patterned standard in need of ulterior justification, on the one hand, albeit its vocation is in practical problem-solving in response to daily needs, on the other. Eventually, law is composed of the dynamism of acts, progressing in competitive processes: the law's genuinely ontic existence lies just in such a process-like progress. On the final analysis, the formalism of law is nothing else but a reified idol, with human participation and unavoidable individual responsibility in the background. By referring to it, it is humans that activate law, transconventionalising it through the series of its reconventionalisation. This is why its parts are mostly aspects that can only be differentiated for the sake of and through conceptual analysis, that is, in a hypothesised and fully artificial way.

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EGY AUTONÓM JOGPOLITIKA KERETEI

Varga Csaba

Funkcionalitásában a jogpolitika a jogalkotással egyidős, diszciplináris területként pedig a XIX. század végétől ismert az európai és az atlanti civilizációban egyaránt, s főként a germán kultúrájú területeken, Skandináviától Magyarországig a jogtudományi gondolkodás multidiszciplináris megalapozású részeként művelik. Fogalmiságában eleve kettős. Egyfelől – szándéka, hatásmechanizmusa, eszközrendszere szerint – politika, merthogy hatalmi nyomást céloz érdekegyeztetéssel, tehát hatalmi eszközök közvetlen igénybevétele nélkül. Befolyásolásának célzott tárgya, kiválasztó s ösztönző szűrője, valamint az általa elvégzett transzformáció strukturáltsága szerint ugyanakkor jog, merthogy a jogiasság optimumának őrzésével magát a jogit célozza, a jog közegéhez egyneműsítetten jogiként újrafogalmazva az eredetében nem jogit. Kereteként hármas szerepjátszás történik, a jogtudomány, a jogpolitika s a jog joga részéről, amit a dolgozat bemutat a jogalkotás s a jogalkalmazás síkján egyaránt. A jogpolitika így a politikum és a jog különneműségei közé iktatódik közvetítő/kiválasztó/alakító közegként, amely feladatának ugyanakkor csakis önnön sajátszerűségei kiteljesedése, vagyis politikumtól és jogtól történő viszonylagos önállósodása esetén tehet eleget.

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THE RESPONSIBILITY OF THE WEB HOST SERVICE PROVIDERS FOR ILLEGAL CONTENTS (WITH SPECIAL EMPHASIS ON THE FRENCH CASE LAW)

Balázs Bartóki-Gönczy

Since the impeachment of the infringing content's author in the "internet's world" proves to be difficult in the most cases, the victims turn for compensation often to the intermediate technical operators (like the web hosting service providers) who are much more easily identifiable. The fact that these technical service providers do not have any influence on the stocked or transmitted contents raises the question whether they might be responsible for it. This study makes an attempt first of all to present the European approach on the web hosting service providers' responsibility for the contents stocked by them with special emphasize on the French regulation. In the second part, the author tries to demonstrate, through the last six years' French case law, the two questions which divide the judges: *(i)* the consideration of the web 2.0 service providers whether they might be considered as a pure web hosting service provider or should be seen as an content editor, and *(ii)* the legality of content filtering imposed as a legal obligation by the judges to the web hosting service providers in particular cases.

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TESTIMONY IN THE HUNGARIAN MEDIEVAL CRIMINAL PROCEDURE

Viktor Vadász

The first written sources of the Hungarian criminal procedure are dated back to the 11th century (statutes of Saint Stephan). The testimony in the ages of Árpád-dynasty was merely formal evidence *(humanum testimonium)*. The witnesses didn't need to have any connection with the case, they didn't testify on what they have seen or heard but they declared a free support on one half. The witnesses were honest and noble men who gave oath on their testimony for or against the defendant.

Later the testimony became material evidence *(inquisitio)*. From the 13th century it was more important what the witness experienced, than his nobility. The witness was forced to testify, and tell only the truth. There were multiple methods on the procedure of interrogation: simple pretrial questioning; common questioning; interrogation of the noble assembly.

From the 16th century the witness was heard in the court session and authenticated his or her written testimony. If the witness wanted to change this previous statement, the judges added the changes on the interrogation letter. The draft statute of criminal procedure from 1795 contained a detailed and advanced regulation on the witnesses and the procedure of questioning. Nevertheless the testimony had a predetermined burden (two appropriate witnesses meant regular proof), the judges met the witnesses and were able to get a direct impression.

During this legal progression the directness became highly important. In the modern criminal procedure the witness is interrogated in front of the judge or jury.

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JUDICIAL DECISIONS ON CIVIL FINANCIAL CLAIM ENFORCED IN THE COURSE OF THE CRIMINAL PROCEEDINGS

KAROLINA TAHY-KISS

The Hungarian Criminal Code regulates the forfeiture of assets as the confiscation of the asset resulting *solely* from the crime by 1999. March 1st and still at the present. Prior to this regulation, the confiscation covered the whole asset owned by the perpetrator. There was no monograph upon the topic of forfeiture resulted by "actions against penalty law" in the Hungarian jurisprudence until the publication of the examined volume. The author Miklós Hollán gives a comprehensive analysis of conceptual problems of the subject criminal measure appropriating the related Hungarian and foreign laws as well as in law related literature. The monograph allocates the place forfeiture of assets in the system of penalties, examines the scope and requirements of application. Following the formal analysis, the review contains content evaluation chapter by chapter and eventually examines the propositions de lege ferenda of the author: which and what extent did those proposals come into action.