

ENGLISH SUMMARY

Julien FREUND, <i>Michel Villey and the renewal of legal philosophy</i>	5
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LAW AND ECONOMY

Bruno OPPETIT, <i>Law and Economy</i>	17
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Law and economy have relations resting on mutual interest delivered by the notion of economical law and analysis but they no longer find their roots one into the other like they did in the 18th century.

Gérard FARJAT, <i>The notion of Economical Law</i>	27
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As a branch of law, it is the law organising economy whose heart is today the competition law with important, even if uncertain, developments in liberal, or on the way to liberalisation societies. It is also a field, maybe even a sub-system of law that can be compared with equity, in any case a "rerooting" of law, in response to the "pressures" exerted by political economy.

René SÈVE, <i>Law and Economy: Four Paradigms</i>	63
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The author distinguishes four models in the relationship between law and economy in the occidental tradition and studies their respective genesis.

Catherine LARRÈRE, <i>Natural Law and Physiocracy</i>	69
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There is no exteriority but continuity, between natural law and physiocracy. Quesnay is a theorist of natural law that gave the name of Economy to his way of treating it. His thesis is that of the extension of natural law into a society. This is realised in the property and this is how Quesnay links, in his theory of natural law, the individualistic affirmation of enjoyment to the evidence of the global rationality of social order. What gives his theory its origi-

nality is also what weakens it, for the order relation, which links the individual to the whole, is an unequal relation which, distributing hierarchically differentiated functions, cannot be universalised.

Didier DELEULE, *From Liberal Individualism to Sociology: A Paradoxical Mediator* 89

When disputing against the notion of natural order, Hume also reconsiders the idea of human nature, understood from then on as the power of invention and artfulness, and not any more as a simple element integrated to the Whole of Nature (like the part of the Whole-Nature in the stoic way), concerned to respect a Nature already constituted into a System.

In the humian perspective, there is no "respect" but the one concerning the inventive dynamism of nature whose only "concern" is its own preservation through its expansive modalities: an attitude that should normally discourage any apologetical project to the benefit of the search for factors improving and preserving the individual and the social body in a given situation; the mediation here is technical. To the conformity to the ordered or instructed once and for all norm, is substituted the detection of mechanisms building norms necessarily changing according to "circumstances".

The Scottish Historical School, by systematising the gains of humian analysis, establishes the notional elements allowing a given discourse on social issues, in short a sociology.

Jean-François NIORT, *Law, Economy and Liberalism in the Spirit of the Napoleon Code* 101

The writers of the Napoleon Code gave a considerable attention to the economical dimension of the legislation as can be seen in the preparatory papers, in particular concerning lending with interest, mortgage, property and trade relations. The spirit of the code may be seen as the summary of a permanent dialectic between, on the one hand the various philosophical, political and juridical principles to which its authors were more or less sensitive, and on the other hand economical and reason of State necessities. The very peculiar character of the liberalism of the Civil Code stems from this.

Frédéric ZENATI, *Law and Economy after Marx* 121

One can address a double criticism to Marx' economism. On the first place, it is a reduction of what may be the influence of matter on history. Others phenomenon, as important as economy, such as war or sexuality, determine the future of mankind and the organisation of society. He also ignores, in a strong reaction against German idealism, the closeness of the links between law and economy which, far from being perfectly distinct instances, verge in fact with fusion. This intimacy explains the fact that modern societies are characterised as much by the importance they allow to the law as by the one they recognise to the economy.

Pier Paolo OTTONELLO, <i>Political Law and Economy in Sciacca's Philosophy</i>	131
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In Sciacca's metaphysics, which inspired the author, the notion of "wholeness", that culminates in the integral being of man, leads to denounce gratuitous divisions as sources of "schizophrenia" inside law, politics and economy when one prefers methods, ways, facts and structures, aside from any horizon of truth, end, principle and substantial life, when one falls slowly into the formalism henceforth condemning an "unmanageable" matter: when the *technical* perversely rubs off the very conditions of democracy. Thus, the economical order of exchange has its own values, that serve as a basis to the cultural values of communication; but the latter are the foundations of the former and none of these values could free itself from the others by ignoring the limit, the measure they assign to it, the last measure being the "wholeness" of man. From there comes the dialectic of their relationship that one can find again in the pair richness-freedom in order to better contribute to the "actuation" of this wholeness, to prevent it from the dismantling of its unity and the retrogressions they entail at the level of social progress.

Alain STROWEL, <i>Utilitarianism and Economic Approach in the Theory of Law</i>	143
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Utilitarianism stands at the origin of the economic analysis of law. However these two flows of the theory of law, respectively represented here by J. Bentham and R. Posner, differ on several points. The kinships and discrepancies between these orientations are shown through a study of their method, of their criterion used to evaluate norms and of their conception of common law.

Richard JANDA, <i>State of the Reflections on the Economic Analysis of Law, using two recent American works</i>	173
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The author studies the developments of the economic analysis of law in the United States in the works of R.H. Coase, Oliver E. Williamson and Sidney G. Winter.

Jean-Robert MASSIMI, <i>Is Business Ethical or is Ethic a Commercial Value?</i>	179
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This article shows the theoretical difficulty to find an ethical basis in an individualistic society. In this context, the social success of ethic in the field of business stands particularly in his use as a good.

- Olivier GODARD, *Economy, Ecology and the Nature of Things* 183

As soon as economy and ecology are granted a nature, it creates between them a deep similarity, with specular effects, in their relation to the rule of law, but it also generates a radical competition between their respective requirements. However referring to the nature of things leads up to a double bind one offers to override through a pragmatist strategy illustrated here with the example of the climate risk.

- Luc J. WINTGENS, *Possibilities and Limits of the Liberal Language*..... 205

I. Introduction. II. The question of rationality in *Social Justice* A. "Rationality" as "reflexive concept"; B. "Rationality" as "engaging into dialogue"; C. Rationality and neutrality; D. Criticism of the neutrality principle. III. Habermas and the multilogical organisation of the political space; A. Introduction; B. The political space and positive law; C. Conscience and communication. IV. Conclusion.

MISCELLANEOUS STUDIES

- Christian DEBUYST, *Reason, Communication and Delinquency. The notion of "reasonable man" and its complexity in Condillac* 229

The notion of "reasonable man" dominated the classical penal conception. Through the work of Condillac, the author shows that psychological implications underlying this notion are more complex than what one usually means with the terms of utilitarianism and sensualism. From a study on language and prejudices, in relation to socialisation, Condillac succeeds in founding a true ethic of communication.

- Christophe JAMIN, *Rereading Labbé and his Readers* 247

The greatest case commentator of the 19th century, Joseph-Emile Labbé, is perceived today as an author intermediary between a dogmatic School devoted to the exegesis of the French civil code and the modern scientific School, more concerned with the study of case law. Such a conception, born from several theses maintained at the turn of the century and popularised by Bonnecase, does not stand the analysis of Labbé's works that can be compared to those of most of his contemporaries. The new face revealed to the commentator could then help to renew our perception of the 19th century doctrine, made of several competing doctrinal currents and not of successive periods.

- Klaus GÜNTHER, *Universalist Justification and Application of the Norm in Law and Moral* 269

The theory of argumentation shows that practical reasoning follows two modalities: it justifies the validity of a general norm and it justifies the accuracy of the application of the general norm to a particular case. The application judgement is the produce of an argumentation directed by a requirement of impartiality. This requirement can be seen in the procedural principle according to which it may not be established that a norm can with legitimately apply to a given situation only if all characteristics of this situation relevant regarding a coherent interpretation of all applicable norms are taken into consideration. Such a validity criterion is expected from a moral judgement as well as for a legal judgement.

- Hervé POURTOIS, *Social Theory and Legal Judgement. About J. Habermas and Kl. Günther* 303

The social theory of law of J. Habermas has given a new impulsion to legal epistemology. For his critical theory establishes the necessary connection between the social function and the normativity of law in modern societies on the one hand and the epistemological status on the other. This paper intends to shed light on this connection.

- Jacques BIDET, *For a Metastructural Reinterpretation of Contractualism* 313

Rawls' thesis is here reinterpreted in the frame of a conceptual synthesis combining the schemes of classical contractualism with those of the Marxist analysis of classes and offers, as well as a general theory of modern society, the principles for a radically transforming political philosophy.

- Francesco VIOLA, *Hermeneutics and Law* 331

The author offers a doctrine of the interpretative method that tends to stand away from Gadamer's Hermeneutics as well as from that of Betti.

INTERNATIONAL CHRONICLES

- Germany, Valentin PETEV 351
- Spain, Consuelo MARTINEZ-SICLUNA, Angel SANCHEZ
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Daniel GUTMANN, <i>A selection of the literature on legal philosophy, published in French, January 1991-June 1992</i>	415
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