English summaries

Questions of Time: Greek Historiography, Greek Law C. DARBO-PESCHANSKI

In Ancient Greece, both historiography and juridical norms gave a central place to a vision of justice as world-order (cosmic, social and political) and as a strict re-establishment of a continuously disrupted state of balance. In historiography, this vision serves to structure time and guarantee the authority of the historian; in the field of juridical norms and procedures, it both founds and transcends the law, preventing the establishment of a closed, self-referential system endowed with its own temporality. As a result of this common vision of justice, historiography and the juridical field were united into a single temporality and a constant movement of exchange in which each depended on the other to provide it with the closure that it could not provide for itself.

Law and Theology in the Thirteenth Century A. BOUREAU

In the High Middle Ages, Law and Theology were perceived as novel twin disciplines based on a same principle, contradictory enquiry. From the mid-twelfth to the beginning of the fourteenth century, they constituted the axis of a scholastic epistémè. *This New Régime of Truth was presented as a construction or reconstruction; the heuristic fiction (that is, replacing a reality by an efficient elaboration) was one of its fundamental constitutive traits. At the intersection of Law and Theology, the concept of «person», once examined, illustrates this analysis. In both fields (but starting from different reference-points, the ficticious person adopted from Roman Law and the distinction individual-person generated by the Trinitarian Dogma) the concept allowed to designate the zone within which the subject of this Truth was relevant, that is, to identify the hub of this* epistémè.

The Function of the Metaphor of the Political Marriage Between King and Republic in France from the 15th to the 17th Centuries R. DESCIMON

From the 15th to the 17th centuries, theologico-political metaphors created a kind of cosmography of the legitimate monarchy. Closely linked to the corporative fiction, the

Annales ESC, novembre-décembre 1992, n° 6, pp. 1301-1303.

image of the king's political marriage with the Republic was borrowed from Lucas of Penna by French jurists (associated with the Parliament of Paris) towards the end of the 1470's (and not in 1527), and the image's ceremonial basis appears to have been even older. During the 16th century, the function of the marriage-metaphor was to modernize the ancient principal of the inalienability of the royal domain, which became, in 1566 a «fundamental law» complementing the statutory transmission (of power). It would nevertheless be a grave error to see, in the development of these fictions, an archeology of constitutionalism. The opposed consequences, on the political level, of the organicist metaphor (absorbing the kingdom into the persona of the «boss») and of the corporative metaphor (posing the possibility of a proper representation of the kingdom), lead back to questions of freedom of king and freedom of kingdom. The «State in right» of the Ancien Régime condemned both kings of freedom. This paradox, however, tended to resolve itself durint the enlightenment, when a critical space was opened in politics by juridical discourse and ceremonial rituel, both of which had contributed, in an on-going competition, to founding the normative order of theologico-political power.

For a constructive epistemology of legal theory G. TEUBNER

This article raises some doubts about the recent incorporation of the social sciences into legal theory and doctrine and develops a sceptical prospective on a smooth interdisciplinary cooperation between lawyers, social scientists and historians. On the basis of a constructivist theory of law, the concept of an autonomous epistème of law is developed which results in the specifically legal construction of reality. This effectively blocks the simple transfer of social science theories and historical studies in the context of legal doctrine and legal practice. An alternative model of interdisciplinary cooperation between law and social science is developed which bases itself on the idea of proceduralization of knowledge.

The use of juridical concepts in history M. TROPER

How legitimate is the use by historians of juridical concepts? The author examines this question in the context of François Furet's hypothesis that the king of France had already been entirely removed from power by the end of 1789. This hypothesis is based on two arguments: first, the French Assembly applied the dogma according to which the unity of sovereignty could only reside in the Assembly itself; second, the king's right to a suspensive veto did not make him into partial legislative organ. Neither of these propositions resists examination. The meaning of the concepts of sovereignty and suspensive veto can only be provided by legal theory. The latter reveals, on the one hand, that the Assembly applied, with respect to the question of legislative power, a concept of sovereignty which posed no objection to the establishment of two legislative organs, and, on the other hand, that the right to a suspensive veto in a genuine legislative power.

Juridical concepts and revolutionary conjunctures F. FURET

In response to Michel Troper's analysis, François Furet's article raises both factual and methodological points.

The former are in relation to the Constitution of 1791 and more specifically to the right of suspensive veto granted to the king by the Constituants *in September 1789. The debates that preceded the vote show that the idea was not to give the king a share in the exercice of sovereignty, but simply to allow for the possibility of a re-examination of the work of the legislators by the people. It was not until the summer of 1791, with the* feuillants' *revision, that the king, declared co-representative of the nation, would be officially associated with the exercice of sovereignty at exactly the moment when, following the Varennes episode, he no longer possessed any authority either political or moral.*

This disagreement with Michel Troper's interpretation of the extent of the king's power in 1789-1791 coincides with a disagreement with his method. François Furet thinks that it is impossible to analyze a Constitution, as such, by its text alone, as if it were a pure system of juridical norms informed by the «correct» theory of law. Even the jurist cannot forego a historical enquiry into the circumstances surrounding the elaboration of a Constitution, the interpretation held of that Constitution by its authors and how that document was put into practice. Such an enquiry may not exhaust the study of a constitutional document but it is certainly a necessary condition for any such undertaking.

Law and Family Strategies in the Reproduction of Family Systems L. FONTAINE

A study of wills from the alpine valleys of Upper Dauphine in the 17th and 18th centuries shows that there was no single model of inheritance, but rather a wide variety of practices. In addition to a diversity of inheritance patterns, there was a diversity over time within particular families; some family heads made different wills at different times in their lives, following a different inheritance pattern each time.

This article attemps to determine how effective the juridical rules on inheritance were. It also addresses the contradiction between the attempt to construct a typology base on these rules while at the same time recognizing that they were not always adhered to. To understand the different ways in which property was transmitted from one generation to the next, the author proposes to replace the traditional classification of inheritance practices in terms of geographic regions with one that takes into account changes over time and the contrasting evolution of such practices among different social groups.

Ordinary Judgements and Legal Judgements L. THÉVENOT

In a converging fashion, sociologists and economists have been increasingly interested in the diversity of the modes of interaction and transaction. They have consequently paid more and more attention to the judgement cognitive or normative agents make concerning a situation and the actions of others. In attributing an important role to interpretation and its limits, these social-scientific fields draw close to the legal field and its juridical reflections on the rule and its use. A confrontation between these domains is therefore called for: by considering the function of judgement in coordinating actions, the Author takes stock of the most legitimate ordinary judgements (those aiming at adjustments endowed with broad validity) in order to initiate a confrontation with legal judgements.

Armand Colin éditeur. Paris — Dépôt légal : 1992 — N° 6396 — N° 6, janvier 1993

IMPRIMERIE NATIONALE (FRANCE) N° 2.565.006.5 — *Printed in France*

N° commission paritaire : 73 172