

ENGLISH SUMMARY

Foreword by René SÈVE	1
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LEGAL SYSTEM

Jean GAUDEMET, Endeavours to systematize Roman law	11
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If under « systematization of Law », is understood its « modeling according to a given logic », such a systematization can be questioned for a law that was essentially casuistry during a thousand years of history. However, some doctrinal works are concerned with « organizing » law. The *Veteres* classify. The *Institutes* of Gaius systematize, the *Edit* sets a certain order.

Michel TROPER, Legal system and State	29
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The author sets out to answer two questions : what theoretical advantages can be gained by considering internal law as a system ? Which definition of the legal system is to be adopted in order to obtain these advantages ? After a constructive criticism of the system theory in Kelsen, the author proposes his own conception.

Constantin M. STAMATIS, Systematicity of law in Kelsen and rational difficulties of a fundamental norm	45
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Based on recent literature, the author studies the matter of law's self-foundation in Kelsen.

Stéphane RIALS, Supra-constitutionality and systematicity of Law .	57
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The author defines the notion of supra-constitutionality, for him more proper to account for the achievement of the legal system than modern natural law, or *Grundnorm* in Kelsen, whose ambiguity he explains. He then shows that supra-constitutionality appears in positive laws through the Bill of Rights. After a summary review of supra-constitutional principles, he states their consequences for the legal system.

René SÈVE, System and Statute (<i>code</i>)	77
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The author studies the similarities between philosophical and legal conceptions of the system. His conclusions are clarified by his study of the notion of system in the texts preparatory to the drafting of the *Code Civil*.

- Jean COMBACAU, *International Law : junk shop or system ?* 85
 International Law is not a collection of unrelated elements brought together by chance, but an ensemble organized into a system : as a legal order formally coherent, internally linked and having with the real behaviour of subjects normative relationships ; and as an ensemble driven by a global logic in which it is difficult to introduce elements foreign to its genius, without risking to dismantle it.
- Krzysztof PLESZKA et Tomasz GIZBERT-STUDNICKI, *The system of Law in legal dogmatics* 107
 The authors demonstrate that there is not one but many concepts of the system in legal dogmatics. Therefore the thesis of systematicity of Law has several meanings.
- Pierrette PONCELA, *Systemic analysis and normative systems in the criminal field* 121
 The institutional ensemble formed by criminal justice is usually considered as constituting a system and has been subject to numerous studies, mostly sociological. The author inventories them and suggests others in the first part of this paper.
 The second part listens to the nostalgic song of a decaying criminal law. It deals with the variety of technical criminal laws : how are they analysed ? Is it not pure rhetoric to conceive criminal law as a normative system ?
- François OST, *Between order and disorder : The game of law* 133
 After an internal critique of the paradigm of autopoiesis, the author proposes to replace it with the paradigm of game, more suitable to account for a significant phenomenon like Law, while keeping the main features of the concept of self-organization.
- Niklas LUHMANN, *The unity of the legal system* 163
 The author sums up his theory of the legal system conceived as a self-creating system. This implies the system to be at the same time closed from a normative point of view and open from the point of view of information coming from the environment.
- Helmut WILLKE, *Societal guidance through law ?* 189
 After acknowledging that modern societies are characterized by functional differentiation and growing autonomy of their sub-systems (science, technology, economy...), the author studies three distinct forms of social movement and the part of Law in each one : spontaneous evolution, planning and social guidance. He comes down in favor of the later after showing that evolution cannot be an answer to the dangers of the time and that planning cannot be brought into effect, social guidance thus turning out as an intermediate strategy.
- Hubert ROTTLEUTHNER, *Biological metaphors in legal thought* 215
 In the first part, the author studies diverse metaphors of organism in XIXth century German legal literature. He stresses the limits of resorting to it for a scientific knowledge

of Law. In the second part, the author maintains that the notion of system as developed by the most recent theories is not fundamentally different from the notion of organism, its relative contribution being, therefore, comparable.

François EWALD, The Law of Law 245

Having described the need for an authority thinking about law over itself, about a « règle de jugement », the author studies the later at the time of « social law », i.e. Welfare State.

Patrick NERHOT, The fact of Law 261

The author considers the classic question of the relation between fact and law in the light of the theory of systems.

Christophe GRZEGORCZYK, Critical evaluation of the systemic paradigm in the science of Law 281

The paper sets out to bring a temporary conclusion by assessing the theoretical advantages and drawbacks of analysing law as a system. The distinction is made between three meanings of system : as synthesis, calculation and organism. Each meaning is subject to a different philosophical and scientific paradigm. The critical evaluation considers them one after the other before concluding on the whole of the systemic method in Law.

MISCELLANEOUS STUDIES

Bernard BOURGEOIS, On Hegel's natural law (1802-1803) 305

The article analyses the fundamental text of Hegel's *Ways to scientifically treat natural law*. He first presents the negative side of the text which is made up of a vigorous criticism of modern natural law — from the notion of the exemplarity of antique natural law —, then the positive side announcing the further developments of hegelian thought.

Miron MUSHKAT and Roda MUSHKAT, Freedom as a common access good in legal analysis 321

The paper offers an economic analysis of the legal concept of freedom.

Luigi LOMBARDI VALLAURI, Vinaya-Pithaka or Law as a technic to communicate the ineffable 333

1. The Vinaya-Pithaka and intra- and inter-typological comparison.

2. Intra-typological comparison : non-Buddhist monastic law, English and Irish penitentials, *libri synodales*, *summae confessorum*, penitential treatises, treatises of moral theology, canonic and rabbinical compilations, rules of philosophical communities, utopia, regulations of military discipline.

3. Inter-typological comparison : the Vinaya-Pithaka as organization « alternative » to secular laws based on possessive individualism.

3-1. The Vinaya-Pithaka as entirely finalized law, at all normative levels. —
3-1-1. Material normative level. 3-1-2. Structural level. - 3-1-3. Inter-personal level.

- 3-2. Morphological aspects : totalitarian, complex-complete, persuasive, interior, subtle, pedagogical, egalitarian, non-democratic voluntary-contractual law.
 3-3. For a value judgement (cross-reference).

TEXT

- G.W. LEIBNIZ, Three texts on law and codification 357

INTERNATIONAL CHRONICLES

- Germany, Valentin PETEV 371
 Belgium, François OST and Luc WINTGENS 373
 Spain, A. SANCHEZ DE LA TORRE 379
 United States, Carl WELLMANN 383
 Italy, Franco TODISCAN 387

REPORTS

- History of philosophy of law 393
 Philosophy and general theory of law 403
 Logic and epistemology 449