ENGLISH SUMMARY

FUNDAMENTAL VOCABULARY OF LAW

This paper attempts to bring out the main philosophical issues concerning the legal notion of convention or contract, principally its foundation or justification. In this respect, a dual realistic and idealistic approach (convention as "thing" then as "will") is necessary before certain evolutions can be understood (reception of realism to sociology) or transitions (change from individual will to socalled "social" will) and analysing some overflows (use of the concept "relation") or shifts in meaning (forms of positivism). Using the same approach, a more specific development defines finally the range of some difficulties related to the theory of the constitution and execution of the convention, the best example being the question of faithfulness to agreements.

Although its scope has been progressively narrowed by legislation, custom remains a source of law and is even considered as its original source; in fact, however, it is in reaction against law, and by way of reflexion only, that custom is figured as a formal source of law; and this very conceptualization has prompted a never-ending debate on its nature and characteristics.

I. Etymologies. II. Definitions, A. Ancient meaning, B.Modern meaning. III. Natural law and positive law, A. Natural law B. Positive law, C. Conclusion : links between natural law and positive law. IV. Law and moral. V. Divisions of law, A. International law and internal law, B. Public law and private law.

I. The notion of natural law as stemming from the notion of law - as: what is just; power or ability; law; established order and from the notion of nature - as: specificity of one being; origin or originarity; vitality; Creation; rationality; normality; necessity. II. The notion of positive law as stemming from the notion

of law (see supra) et from the notion of positivity - as fruit of the will; what is established; effective, social or psychic reality. III. The couple natural law/positive law : the distinctive characteristics of its elements: universality-particularity; immutability-mutability; rational evidency-declarativity; goodness, moral malignity-indifference; goodness-utility. The typical relationships: generality-speciality; superiority-inferiority; inclusion-exclusion. The respective functions: legitimative-revolutionary; conservative-evolutionist; critical-pedagogical.

The author, going against an artificialist and positivist conception, tries to determine the ontological bases of subjectif law, particularly by looking closely into Husserl's and Levinas' analyses.

There are two definitions of equity. According to one, falsely attributed to Aristotle, "Equity is justice in the concrete instance". According to the other, "Equity is an exception to straight law". No other fundamental notion has been surrounded of so many mysteries, uncertainties and predicaments as witnessed by the cliché assimilating equity to a discretionary sentence left to the independant decisionof the judge. In fact, equity is not a vague, impressionist judgement.It arises from a rigorous demonstration, which is not susceptible of being disproved, invalidated or annulled by any contrary proof.

The State, (this word is a neologism) characterises the modern form of political power. In a legal sense, the notion first indicates an political entity, original because it is sovereign. This quality allows it to be distinguished from other powers and means the State benefits, on its own territory, from a monopoly of positive law. In this last respect, it inherits certain classical legal notions (corporation, crown) and the public equivalent of the modern subject of law.

Introduction. 1. Various meanings of the word fact. 2. Selected meaning; idea of an opposition between fact and law from a double point of view. I. — The fact, object of law's application. 3. Analysis of the structure of the rules of law and of the syllogical mecanism of their application; distinction, which seems to stem from it, between fact and law. A. Critique of this distinction. 4, 5, 6. Difficulties always arising from its utilization; impossibility, for certain persons, to split the fact from the law. B. Defending the distinction. 8. Logical possibility of drawing the border between fact and law at the heart of the syllogism; chain of syllogisms; subsumptive syllogism. 9. Practical interest of the distinction criminal, civil, administrative procedure; for a reversion to the distinction as criterion used to determine the sovereign power of the magistrate in a given case and the control by the Cassation court. II. — Fact in the margin of law. A. Situations of fact. 10.

on the roman notion propounded by Justinien and 17th and 18th century jurists lay the foundations of the modern definition.

Property law may be studied along three lines : its emergence, its object and its function. Emergence asks the double question concerning the origin and the legitimity of law; it reveals the fundamental links between possession and property. Concerning the object, property law constitutes the link between the person and the thing, allowing the union, or the fusion without distance, between being and having: property law allows the being to freely determine himself into one having, whose consistancy is indifferent; in this respect, property is freedom. From then on, the main function of property law is purely esthetical. This power of reflection is the basis of an ethical dimension of property, pure mirror of a perfectly free being. Therefore the development of utilitarist thinking, resting on a functionalised property law, may be criticized.

The meaning of the word rule is very near to that of the words norm and law. Attempts to define a signification specific to these three concepts have failed in the numerous fields of knowledge using them. However it seems that the word rule is the most general one. Therefore it deserves a definition which has been evolved without the help of these synonyms. The notion of pattern of judgement, abstract scheme useful in the measurement of the world and therefore for the orientation of human action, gives the core of this definition.

I. — "Res publica" for the Romans. II. — Genesis of the concept of "State". A. Organological conception of "res publica". B. Juridical conception of "res publica". III. — Dynamic notion of "res publica" in political aristotelianism of modern times. IV. — "Res publica" for the theoreticians of the School of natural law. "Res publica" and "republic" in the debate surrounding the legitimate constitution.

The word "responsibility", which appeared at the end of the 18th century, was only transposed from the language of orality to that of law in the 18th. Its origin have, moreover, made a profound impression on the institution which it designates. The latter, with its two components - Civil and Penal Law - has been subjected to such conditions as fault, imputation, imputability, which are directly inherited from individualist ethics. But the progressive adaptation of this concept to specifically legal usage has lead to the transformation and even - in certain cases - to the disappearance of these conditions, tending to favour the taking into consideration of an objective which is everywhere coming to the fore - i. e. the appeasement of social unrest provoked by the results of injustice. This orientaion

which has influenced Civil (reparatory) law as well as Penal (repressive) Law, explains a dual evolution. At one moment, on of the two disciplines - that which is less well-armed to combat effectively the unrest in question tends nowadays to efface itself, giving the other singular importance and causing it to stand out. At another moment, each props the other up - penal law seaking to favour reparation and civil law to assist in repression.

I. — Etymology and brief historical outline. II. — The current conception of sanction. A. The positivist trend (internal perspective), 1 - Sanction as constraint, 2 - The short-comings of the dfinition of sanction as constraint, 3 - the inappropriatedness to law of the definition of sanction as constraint, 4 - Sanction in effect, in law, 5. Deconstruction, reconstruction; B. Sociological trend (external perspective). Conclusion.

MISCELLANEOUS STUDIES

REPORTS

Composé par BARBEROUSSE, 72 Quai de l'Hôtel de Ville, 75004 PARIS
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