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Rene Thery

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TEN YEARS OF THE PHILOSOPHY OF LAW IN FRANCE

STUDIES OF THE PHILOSOPHY of law have never known the same favor in France as in certain foreign countries. They are completely absent from our official curricula. This omission indicates a certain indifference, and also contributes to its increase.

However, the immediate prewar period witnessed the birth of *Les Archives de Philosophie du Droit et de Sociologie Juridique*, directed by L. Le Fur; from 1931 to 1940 they prodded French jurists to fruitful thought about the nature and bases of law; they even took up more specialized problems, such as those of reform of the State, of the corporation, and of contracts.

One might have expected that the Liberation would contribute a new stimulus to the studies of the philosophy of law. In reaction against the totalitarian regimes and their excesses, declarations of rights were flowering. On the old Continent, great social and political upheavals were demonstrating the fragility of juridical constructions: it seems that they should have led the jurists to seek support in the principles of natural law. As a matter of fact, such was not the case: probably it was necessary first to take stock of the changes which had come about, before finding the leisure to philosophize about them.

At any rate the period from 1945 to 1955 is, from our point of view, clearly a regression compared to the prewar period; works on the philosophy of law have not been very numerous, and, while the *Archives de Philosophie du Droit* have resumed publication, they have so far published only two fascicles (1952 and 1953-54).

It would, however, be unjust to paint the situation in too dark a light. Worthwhile works, devoted primarily to the theory of law, often contain an embryonic philosophical concern.¹ Some "Introductions to Law" have been written for students by recognized authorities, who do not fail to express their ideas on the nature and the bases of law.² Some books of synthesis paint in broad frescos the dominant traits of our juridical evolution: they cannot do so without referring to the higher principles which dominate it and judge it.³

It suffices merely to mention these works which do not deal with the philosophy of law, properly speaking. But we also have a few books, the subject of which corresponds directly to our question: we shall select three, the most significant.

In first place we shall consider *Valeur Sociale et Concepts Juridiques* (Social

1. MASPETIOL, L'ÉTAT DEVANT LA PERSONNEL ET LA SOCIÉTÉ (1948); MOTULSKY, PRINCIPES D'UNE RÉALISATION MÉTHODIQUE DU DROIT PRIVÉ (1948); GORPHE, LES DÉCISIONS DE JUSTICE (1952); PERROT, DE L'INFLUENCE DE LA TECHNIQUE SUR LE BUT DES INSTITUTIONS JURIDIQUES (1953; BURDEAU, TRAITÉ DE SCIENCE POLITIQUE 6 vols. 1949-1956).

2. COSTE-FLORET, LES PROBLÈMES FONDAMENTAUX DU DROIT (1948); BRETHE DE LA GRESSAYE & LABORDE-LACOSTE, INTRODUCTION GÉNÉRALE À L'ÉTUDE DU DROIT (1947); JULLIOT DE LA MORANDIÈRE & DIVERS AUTEURS, INTRODUCTION À L'ÉTUDE DU DROIT 2 vols. (1951, 1953).

3. RIPERT, ASPECTS JURIDIQUES DU CAPITALISME MODERNE (1945), LE DÉCLIN DU DROIT (1949), LES FORCES CRÉATRICES DU DROIT (1955); SAVATIER, DU DROIT CIVIL AU DROIT PUBLIC (1945), LES MÉTAMORPHOSES ÉCONOMIQUES ET SOCIALES DU DROIT CIVIL D'AUJOURD'HUI (1948).

Value and Juridical Concepts), by Marc Réglade, because he marks the final stage of the evolution of the school of Bordeaux, founded by Duguit, which played such a great role in France during the first half of the 20th century. We shall then take up the *Théorie Générale du Droit* (General Theory of Law), by Paul Roubier, who is very representative of the tendencies dominant in France: his equilibrium, his restraint, his humanism have made him the leader of the staff of the *Archives*, new series. Finally, one of the collaborators of this publication, a philosopher before being a jurist, M. Husson has given us a very well thought-out book which renews the methods of the philosophy of law.

I

A disciple of Duguit and of Bonnard (himself a pupil of Duguit), Réglade⁴ seeks to remain faithful to the doctrine of the master while himself bringing to it some important and apt rectifications.

We must therefore recall that the system of Duguit is positivism in the strongest sense of the word. He rejects with horror all metaphysics, clinging only to the fact of solidarity, the product of the similarities of needs and the differences of aptitudes which prevail among men. Solidarity brings to bear on the members of a group a constraint, the exigencies of which are expressed in the rules of social conduct: economic laws, moral rules, juridical rules, which differ among themselves only in the form of social reaction evoked by their violation (loss of wealth, public disrespect, intervention of public force). The juridical norm, like all others, is a simple fact, effective for creating discipline, but creating no "metaphysical duty," i.e., no duty in the true sense of the word.

Réglade mentions the well-founded criticisms of Duguit: on the one hand, "social facts, as facts, are powerless to produce norms . . ."; on the other hand, "the very nature of juridical norms has not been sufficiently defined" (p. 19).

To remedy this weakness, another disciple of Duguit, R. Bonnard, had previously proposed a corrective, the idea of social value, which, indeed, puts the system back on its feet only by transforming it completely. "It is this idea of value which, existing behind the institution or the social fact, confers on them a normative power, i.e., brings with it duties for human activity" (p. 20). This value has an objective character because it is a quality of the object: its suitability for an end. It takes on an absolute character when this end is an ideal, i.e., a perfection to be achieved in the human being: whence the categorical imperative which results from moral and juridical rules. These rules differ according to their respective ideals: the plenitude of the individual being, or the plenitude of the social being.

Réglade adopts the idea of social value, but he strives to give it more exactness and precision; then he seeks to determine how the mind perceives it: following Gurvitch, he will show that it is through a "juridical experience." But since, according to his own admission, he is not adding anything original here, we can leave aside the chapter which he devotes to it; we shall strive rather to describe

4. VALEUR SOCIALE ET CONCEPTS JURIDIQUES. NORME ET TECHNIQUE. ÉTUDE DE PHILOSOPHIE DU DROIT ET DE THÉORIE GÉNÉRALE DU DROIT (Paris 1950).

his position relative to social value, which is at the heart of his thought, as is indicated by the title of his book.

First of all he finds in value the necessary "*link between the phenomenal laws and the imperative contained in the norm*." Unless a value is conferred on a fact, it will never produce an imperative, especially a categorical imperative, for, of itself, it will never cause us to perceive a good to be attained" (p. 31).

But he insists on showing that the concept of value has the objectivity required of any scientific concept. Bonnard had already established this for the value of a *means* to attain an end. This is more difficult to do for the value of an object taken as an *end* itself.

Réglade believes he succeeds in getting around this by means of the *collective experience*: "The objective quality of the value of an end results from generalization made possible by the identity of reaction among all human beings or all the members of a human group" (p. 36). He had also to complete the distinction sketched by Bonnard between the moral rules and the juridical rules. Réglade attacks the problem first from the point of view of the ideals which confer value on them, and he very rightly observes that ethics strives for the perfecting in man of the social being as well as of the individual being. The ideal and the value which are the basis of the rule of law must therefore still be sought for: they will be found in the social good or *common good*⁵ of an ideally perfect society. The latter requires the respect of the "general principles of justice which seem true to our moral conscience at all times and in any human society whatsoever": this corresponds to "natural law" in the oldest sense of the term. But that is not all, and our author adds a second characteristic to complete the definition of the value which is the basis of the juridical norm: the common good is in reality determined "in concerto"; it is the "*social good particular to a specific group*, as this good exists, conditioned by the vital requirements of this group" (p. 47).

Having defined juridical rule in this way, one must still establish the legitimacy of law, i.e., the basis of its imperative. The task is now easy. The rule of law is obligatory because "juridical ordering has as its aim the realization of the community good in a given society" and because this good itself is "the condition for the personal good of each individual in the community in which circumstances have placed him" (p. 53).

What a far cry from Duguit! There was no error when a certain critic pointed out in Réglade's thought the "influence of a Neo-Scholastic ideology, visible in the importance assumed by the human element and the notion of common good."⁶ And still the author seeks to remain faithful to his master, as is constantly shown by his care for objectivity and scientific exactness.

One sees it also in the importance which he attributes to custom as a practical criterion or juridical rule. To be sure the transposition here is very noticeable. For Duguit, a social rule is juridical when the feeling of solidarity and of justice in the great mass of the individual consciences requires that it be sanctioned by means of the force of constraint in the hands of those governing. For Réglade, the rule of law "exists as soon as the social value of justice is objectively attached

5. Author's italics.

6. MOTULSKY, ARCHIVES DE PHILOSOPHIE DU DROIT 228 (n.s., 1952).

to a norm." But the best manifestation of its existence is custom, which is the sign of an "opinio juris" in the great mass of individual consciences, and, indeed, custom "alone represents a sure social experience of the rule of law" (p. 52). One cannot therefore affirm of a law that it "contains an obligatory juridical rule except after multiple individual applications which make of it a customary rule" (p. 64).

After studying the concept of law, the author, in a second part, examines the juridical concepts which are connected with it: normative concepts (those of "subject of law" and of "subjective law") which are necessary even to think of law; technical concepts elaborated for the practical realization of the juridical norm (formal sources of law, capacity and competence, juridical acts, sanction).

Réglade refuses to discuss the person, or subject of law, other than on the plane of the normative or of values. One must therefore consider the question from the point of view of the social order of a particular community: if an individual or collective activity is pursuing an aim which has a social value, the norm will then protect it by means of conferring on it juridical personality, or the quality of subject of law. That is all. This explains why the slave was not a person in Rome, where there was yet no understanding that every human person has of necessity a value for the society of which he is a member. Thus we understand that collectivities, according to the role they play and their importance, are or are not attributed the quality of a moral person. In short, "the subject of law is the juridical statute of a human activity, either individual or collective, protected by law because of the social value of the aims which it pursues" (p. 79).

The same extremely "Duguistic" desire to link everything to the social order inspires the definition of subjective law. It has been carefully purged of any reference to a power of the will: this latter is only of the order of ways and means—it is a creation of juridical technique. Subjective law "is the recognition and the protection of an interest, connected with a subject of law and having a social value, by means of the creation, through the juridical norm, of a duty incumbent on one or several other subjects of law" (p. 88).

These formulas may seem a little labored, as is true of all this effort to restore "metaphysical duty" at the heart of a positivistic doctrine. This is true. But one must credit the author, now deceased, for the courage and lucidity with which he re-examined the convictions of his youth in order to be more exact without ceasing to be faithful. One can also thank him for having shown that a true spirituality can be allied to the most social concept of law.

II

Paul Roubier⁷ did not have to break the hold of a highly developed system in order to introduce a "philosophy of social values": admirably well informed of all the juridical doctrines of the present and of the past, he describes them with a receptive spirit and he judges them with all the more serenity in that he

7. THÉORIE GÉNÉRALE DU DROIT. HISTOIRE DES DOCTRINES JURIDIQUES ET PHILOSOPHIE DES VALEURS SOCIALES (Paris 1946).

himself is not a part of any one school; his thought, marked by its flexibility and its equilibrium, strives rather for conciliation, which does not prevent him from taking a strong stand for a finalist concept of law placed at the service of the work of civilization.

Roubier first takes up the *exterior aspect of the rule of law*. He characterizes this rule as the general and abstract norm sanctioned by public authority. But he devotes himself above all to a definition of the positive nature of the juridical rule by contrasting it with the moral rule: he reacts against the opposing excesses of those who make of law the discretionary product of state will and of those who relax too much the ties between law and the State and the expression of its formal will.

The second chapter is devoted to the *basis of the rules of law*. The author begins by observing that "by basing oneself on the one hand on the social nature of man, and on the other hand on the necessity for an organization within society, one arrives at the idea of what is juridical and what is not. In other words, one has a formal notion of law, which constitutes a logical framework, which could house any content whatsoever . . ." (p. 87). The investigation must therefore be carried further: one must analyze the "interior content of the rule of law."

We cannot follow the author in detail through his examination of the diverse doctrines to be encountered on this subject. But it will interest us to see his position in regard to the doctrine of natural law. Let us say at once that he refuses to subscribe to it in either its older form or its modern form. The idea of "higher and intangible principles," of "minimal rules of justice and ethics which dominate laws" seems unsatisfactory to him. On the one hand, how difficult it is to determine these unchanging principles, if one takes into account the historical and comparative research of contemporary science! and of what use will they be if, to escape objection, they are limited to affirmations so general that they "no longer have anything to do with the contents of a rule of law, which by hypothesis supposes the precise relementation of a juridical situation?" On the other hand, and more important still, if one examines them closely, one sees that some of them are absorbed into the acquisitions of human experience (family, property, the State . . .), and the others into the ideal of justice (respect for the human person, respect for one's word, reparation for a wrong unjustly caused).

Will the partisans of natural law feel that this criticism really affects them? They will freely agree that natural law, just as positive law, makes use of the idea of justice following the data of experience: but of all human experience they accept only the most constant traits, those which have a universal application because they are the very expression of human nature.

Be that as it may, one will certainly agree with Roubier that the results of experience and the ideal of justice constitute the two poles between which the jurist's thought gravitates as he elaborates that work of art: the rule of law. Does this mean that law is a social order founded on justice? Our author denies this, for too often this order disregards justice, as when it refuses to consider injury, or when it institutes acquisitive and extinctive regulations. The weakness of the juridical order is that it cannot satisfy completely and at the same time all the opposing interests, even if they are legitimate. One must therefore be satis-

fied with saying that law is a "social order directed toward justice" (p. 163), or more explicitly that it is an "ordering toward an ideal of justice of situations corresponding to the needs of human relations, which, moreover, vary according to time and place" (p. 184).

But since the idea of justice was defined earlier as "the idea of a higher order which is to reign in the world and which will assure the triumph of the most respectable interests" (p. 175), one has still to determine the values in function of which one will judge the respective merits of the competing interests: which means seeking "*the aim of the rules of law*" (Chapter III).

According to different doctrines, this highest goal will be individual liberty, social organization, or the work of civilization which requires the combined effort of the individuals and of the States. Roubier favors this latter formula of synthesis, which, in his eyes, has two complementary aims: progress, due especially to individual initiative; and security, due primarily to the collective order.

If one adds to these ideas of security and progress that of justice, which was brought out earlier, one will say with Roubier that all juridical order depends on these three values. The author does not establish a hierarchy among them based on their respective dignity, but he points out that they are not equally urgent. Social progress and even justice constitute a sort of luxury which one can allow himself once security has been assured, and, in times of crisis, in order to safeguard it, one will sacrifice first the thoughts of progress, and even the requirements of justice.

Some may perhaps not be entirely satisfied with this conclusion: it may be admitted that progress is less indispensable than security. But must the same be said of justice? In addition, is it exact to place the three values on the same plane? We ourselves would prefer to consider justice in the social order as the supreme goal of law. The desire to carry this justice to its highest point of perfection is what evokes progress. And, if one looks at it carefully, one sees that security itself corresponds to an imperative of legal or general justice. Above all, exterior order must be maintained; to attain this, society rightfully requires of its members *as something due* that they sacrifice their individual interests, as legitimate as they may be, in the face of commutative (injury, regulation) or distributive justice.

Undoubtedly Roubier could say that his purpose in writing did not oblige him to be so precise, for, in his foreword, he took care to warn us that he did not wish to write a philosophical work, but to write simply as a jurist, proposing some "ordered reflections on the juridical organization of human societies." This reserve may seem excessive, for, by their very nature, considerations on the basis of law are indeed of a philosophical order. But perhaps the author simply wishes to give us to understand that a jurist cannot avoid thought of this type, and, perhaps, his modesty is also a clever way of overcoming the objections of his public.

Similar reasons of opportunity inspired the orientation he wishes to give to the new series of the *Archives de Philosophie du Droit*. He says this very clearly at the beginning of the first volume: "We do not hesitate to assert that it is well for us to get back to the study of the philosophy of law, which has too long been neglected in France. At the most it is well to be careful about

the transitions so as not to frighten our jurists, who have so long been faithful to other methods, by introducing doctrines of pure philosophy too suddenly."

It is understandable thus that the *Archives*, temporarily unfaithful to their title, limit themselves almost exclusively to studies of juridical synthesis and of general theory of law. These studies are of their kind excellent. They have been devoted to current problems. The first volume, published in 1952, examines "the distinction between private law and public law and public enterprise": it does, however, broaden this framework somewhat by means of a long and noteworthy study by G. Chevrier on "the introduction and the vicissitudes of the distinction between 'jus privatum' and 'jus publicum' in the works of the old French jurists"; but one cannot fail to regret that no place at all was given to a philosophical consideration of the notions of *public* and *private*?

On the other hand, the second volume (1953-1954), *Deontology and Professional Discipline*, receives a useful clarification from an introductory study by a philosopher, Léon Husson. He is precisely the one whom we have yet to discuss—not so much for this article, however, as in connection with his excellent doctoral thesis, a strong and original work.⁸

III

What Husson has undertaken is something really new, at least in France. "He studied the intellectual activity of the jurisconsult, as has been done for that of the physicist or of the naturalist, in order to analyze its proceedings, to criticize them from within, and to determine what their examination can reveal as to the behavior of the human mind and as to the object to which it is applied" (p. 4). His effort is therefore something of an extension of that of Géný, to whom he renders due homage: but the latter's work was, properly speaking, a study of methodology, whereas that of Husson is of the order of philosophy (and more specially of the philosophy of the sciences).

In the analysis of juridical thought, he rightfully believes he will discover a perspective which will make it possible to confront the rival claims of sociology and of the philosophy of law, since this thought is constantly engaged in inserting values into the thread of social facts. He hopes thus to be able to cast light on the difficult problem of the relationships between the normative sciences and the positive sciences. But above all, a deeper understanding of juridical thought must, of necessity, lead one to a better comprehension of that which is its object: law, its nature, its basis, and its content.

If this undertaking is new, it is because, to be successfully completed, it requires a mind which is no less that of a jurist than that of a philosopher. Husson was a philosopher by profession: and now with conscience and hard work, both equally admirable, he has become a true jurist whose wealth of information and sureness of judgment amaze the specialists.

Thus all his reflection can be rooted in the searching description of a juridical theory, namely that of civil liability; even more, it does not hesitate to

8. (Paris 1947).

examine in detail the doctrine and the jurisprudence connected with one of the most ticklish problems—that of the liability of the unpaid carrier. That is what is expressed by the title of his work, what would be better expressed if the subtitle were placed first: *Transformations of Liability: A Study of Juridical Thought*.

It is unnecessary to follow here the author's very detailed study of French positive law; as important as it may be because of the matter which it offers for the author's thought, it would have little interest for the foreign reader. Here it is sufficient to know that the Supreme Court of Appeals takes into account the service rendered by the carrier to his victim and softens the application of the general rules of liability. This solution is commonly approved, but it was not arrived at without many hesitations, and it is explained in very different ways, none of which is entirely satisfactory, for, as felicitous as it may be, it is hardly in accord with the whole of our system of liability.

Husson describes these jurisprudential hesitations and doctrinal discussions, and he has no trouble showing how direct appraisals influence the play of the arguments: "It seems, therefore, that we are confronted not so much by consequences obtained by deduction from principles on which they are based, but rather by true data, directly offered to the mind by the consideration of the cases in question, and which the logic of positive law accepts or rejects . . ." (p. 82). This is an induction guided by a judgment of value and which tends to rediscover, combine, and modify established juridical principles or which prudently forms new ones. The conceptual expressions used by lawyers, judges, or professors may be different or even antagonistic; they all refer to a couple of inseparable ideas: that of equilibrium and that of the mine, thine, and his.

This observation is important, but must one cry victory just because we find the same fundamental principles at the base of all juridical constructions? The jurist may well render them a Platonic homage, but what use can he make of such meager matter? Husson does not minimize the difficulty. On the contrary, he rightly discerns therein the principal reason for the difficulties of the philosophy of law: they result from the meeting of two opposing movements—"the one which tends to cause the jurist to take note of the inability of positive law to maintain itself alone and consequently to seek for its sources and justifications beyond its own reality, and, on the other hand, the one which brings him back to this reality as being the only thing capable of offering a perfectly defined object for his study" (p. 179).

The difficulty has repercussion on the use of the juridical categories which the jurist employs constantly to sustain his thought: their prestige is being shaken. These categories, in which the fundamental theme of justice is more or less well expressed, are complex, unstable, and, for the most part, artificial: "of what good are distinct frameworks since human conscience projects on them the same exigencies, which have symmetrical expression in all?" (p. 181). And, again, of what good is the distinction between contractual and felonious liabilities, since, in the end, it is of so little help in determining the liability of the unpaid carrier?

In order to clarify this problem of the juridical categories, Husson uses a detour, which is at first disconcerting, but which later turns out to be very

successful. He looks for guidance to the biological sciences, which have developed so highly the art of classifications. He notes that the content of the idea of "mammal" may seem rather meager: "who could make a drawing representing equally well the dog, the ox, the bat, and the whale, not to mention man?" (p. 198). The class "mammal" does nonetheless express a certain type of organization, a certain manner of approaching the problem of life. And if the families, the genera, and species into which it is subdivided take on different forms to *adapt* themselves to the variety of their conditions of existence and thus work out concrete types, they nevertheless present "a same inner construction which justifies their being grouped together" (p. 198).

Having taken into account the normative character of law, one can reason by analogy relative to the juridical categories. To give them all the clarity, all the precision, all the usefulness of which they are capable, one has only to arrange them in levels from the general categories, all the way to the concrete situations, passing through all the intermediate categories. Everywhere one will observe the same laws of basic *organization*, the same type of equilibrium; but this type, which is purely abstract at the level of the general category, finds a viable existence only in particularizing itself, in taking on an exterior form *adapted* to the circumstances of time, place, and civilization.

This exterior form is directly the work of juridical technique, which traces the contour of the institutions; but it is governed by the laws of basic organization, which determine the interior form, i.e., the structure, and which constitute the fundamental datum which is truly juridical. It is well known that this datum is not arrived at after formal argumentation: it is perceived all at once through an intuitive judgment, the implicit principles of which will later be brought out by rational analysis. Thus one can speak of a *juridical experience*, as one speaks of a moral or religious experience. One has only to submit it to analysis "in order to discover the unknown or the unknowns on which the juridical life is always dependent" (p. 401).

One will therefore observe the reaction of the human conscience, which alone gives meaning and significance to facts, the simple material noting of which can pose no juridical problem, nor suggest the least solution. One will consider the intellectual attitude which, through schematization leads to conceptualization: it undoubtedly has its origins in our own self-interests, but, inspired by our moral reactions and aspirations, it attains impartiality. Of course these reactions and these aspirations bear our mark: but we cannot suppress them or fashion them according to our whim. Through them we therefore attain a datum which is founded in the individual and social nature of our species.

Now "all living nature possesses two aspects: it is first of all the combination of the characteristics present in the living being at the time of its birth. But more basically it is also the type, rudimentary in the embryo and the new-born" (p. 449), and which is fully realized only through the coordination and balancing of diverse elements in their common subordination to a rule of organization and of adaptation, in other words, to a finality. If this is applied to the human species, the latter is characterized by the fact that the exterior and interior equilibrium which it needs cannot be achieved without the regulation of reason

and of will: a free being, man has not only a destiny, but also a destination, or, better yet, a vocation; he works his way toward it by means of law as well as of ethics. In revealing its secret to us, juridical experience also clarifies itself: "the intellectual activity of the jurist moves between two poles: the one of 'that which is' and the one of 'that which should be,' and it consists essentially in a constant coming-and-going, by means of which it defines the second by studying the first, and thereupon tries to make it prevail" (p. 487).

This restoration of the idea of nature is not the least interesting aspect of the work of Husson. He might be reproached with not having shown clearly enough the bonds which unite law and political society: hence a lack of vigor in the distinction between law and ethics. But we must thank him for having suggested a dynamic view of natural law: not a body of rules established once and for all and which, while foreign to positive law, should however be accepted by it—but, rather, simple directives, which thought has defined from juridical experience, in order to make of them the necessary and constant sources of inspiration for all positive constructions.

Our only fear is that these directives may seem very scarce and very broad. In this respect, Husson's work seems to demand a continuation: does juridical experience have nothing to teach us about the laws of basic organization which govern the union of the sexes, the use of natural resources, the exchanges of services, the establishment of a human community? The author could have suggested as much even if he could not treat it in his book. It is not clear that he is very receptive to this type of ideas: true, as we have seen, he has recently studied "the professional activities and law";⁹ but if he, once more, turns his thought to a rather restricted domain of positive law, in the end he only reaches the same very broad conclusions which the study of liability had already suggested to him.

He has, at any rate, one merit which cannot be taken from him: that of having given to the philosophy of law a truly new direction, which the jurists, who are the most attached to their technique, can hardly refuse to follow after him. For he does not ask that they cease one minute to think as jurists; he invites them to see everything that is in their thought, and everything toward which it tends.

Among the sciences, law has a unique position, which is the source of all its difficulties. It has as its object a rule of conduct, but it claims the right to introduce itself into the pattern of positive facts. It has as its object a social fact, but it claims a right to impose itself on consciences and constrain them.

How can jurists often avoid being disconcerted? They may be tempted to escape into a purely rational construction, banning from it the moral imperative; they were so tempted in the 18th century, but the peril seems definitely removed in our times. They can, on the other hand, dwell on strictly sociological explanations: the peril is more of the present; but it is, however, diminishing. Henry Levy-Bruhl, even if he has retained intact the faith of his followers and his family, cannot hide his present isolation;¹⁰ as for the system of Duguit, it has

9. ARCHIVES DE PHILOSOPHIE DU DROIT (n. s.). DÉONTOLOGIE ET DISCIPLINE PROFESSIONNELLE 1-44 (1953-1954).

10. ASPECTS SOCIOLOGIQUES DU DROIT (Paris 1955).

been so deeply modified by Bonnard and Réglade that it has ceased to be a positivism.

Does this mean that all French jurists arrive at a harmonious synthesis of sociological observation and philosophical reflection? Certainly not. A minority of them deliberately refrain from any metajuridical speculation, limiting themselves only to the description of the law in force: in their opinion, the jurist, because he is one, must reject any judgment of value, any appreciation of a moral order. Such is, at the end of his career even as at its beginning, the position of a French author, Georges Ripert, who last year vociferously reaffirmed his hostility toward natural law.¹¹

The majority, undoubtedly, like to add to their quick observation of social facts a Platonic homage to the principles of justice or of social order which are basic to the obligatory character of positive law. But they are tired of the oft-repeated discussion as to the existence of natural law, and they do not expect much from the philosophy of law, the usefulness of which in their daily work is not apparent to them. It is therefore in a completely empirical manner that they judge from day to day the expediency or the equity of the rules or the institutions which they have to know. When they wish to broaden their field of thought, they turn their efforts toward syntheses of positive law; they bring out its technical provinces or the main lines of its evolution.

These views of details or of the whole do, of course, reflect an implicit philosophy. It is this philosophy which should be brought to light through a systematic study which would define and clarify it.

One will be all the more successful in this if he makes use of juridical experience to see in what direction it is tending, and carefully analyzes all institutions to discover their true meaning.

RENÉ THÉRY

(Translated by CHARLES E. PARNELL)

11. *LES FORCES CRÉATRICES DU DROIT* (Paris 1955).