

SUBSTANTIVE AND REFLEXIVE ELEMENTS IN MODERN LAW

GUNTHER TEUBNER*

The most comprehensive efforts to develop a new evolutionary approach to law are found in the work of Nonet and Selznick in the United States and Habermas and Luhmann in Germany. While these theorists are concerned with a common problem—the crisis of formal rationality of law—they differ drastically in their accounts of the problem and their vision of the future. This paper tries to resolve these differences by first decomposing and then restructuring the diverse neo-evolutionary models. Using a more comprehensive model of socio-legal covariation, the author identifies an emerging kind of legal structure which he calls "reflexive law." Reflexive law is characterized by a new kind of legal self-restraint. Instead of taking over regulatory responsibility for the outcome of social processes, reflexive law restricts itself to the installation, correction, and redefinition of democratic self-regulatory mechanisms. The author identifies areas of private law in which reflexive solutions are arguably emerging, and he spells out the consequences which a concern for reflexivity has for a renewed sociological jurisprudence.

I. NEO-EVOLUTIONARY THEORIES ABOUT LAW

We live in a time of increasing disenchantment with the goals, structures, and performance of the regulatory state. The political debate over "deregulation" (e.g., Breyer, 1982; Mitnick, 1980; Wilson, 1980) is just one manifestation of a much broader reappraisal of the systems of law and public organization.

* This article has changed from a one-man business into almost a transatlantic enterprise. It started at the Center for the Study of Law and Society at Berkeley, where I gave a seminar on comparative legal theory. In this challenging atmosphere, especially due to the presence of Philippe Nonet and Philip Selznick, I wrote the first draft, which then underwent critical examination by many colleagues, among them Richard Buxbaum, Johannes Feest, Wolfgang Fikentscher, Wolf von Heydebrand, James Nickel, and Rainer Walz. I have to thank the Deutsche Forschungsgemeinschaft for financial support.

On the other side of the Atlantic the paper met considerable criticism. My colleagues at Bremen especially and also elsewhere helped me with critical suggestions. I want to mention Gert Brüggemeier, Peter Derleder, Dieter Hart, Christian Joerges, Karl-Heinz Ladeur, Eike Schmidt, Klaus Sieveking, Helmut Willke, and Gerd Winter. Then the paper was exposed to the pleasant surroundings of Florence. I am grateful to the participants of the seminar on "New concepts of jurisprudence," particularly Werner Maihofer and Joseph Weiler, and I also received valuable suggestions from Marc Galanter and Niklas Luhmann. Presenting the paper to an American audience created the urgent need to "de-teutonize" it. David Trubek and Richard Lempert made extremely valuable suggestions regarding the final version. In fact, their cooperation was so intensive and their contributions went so far beyond usual editing activities that one can no longer speak of an individual article but of a collective

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The Role of Law in International Politics Michael Byers, 2001 This interdisciplinary volume examines the highly topical issue of the role international law plays in international politics today. *The Health of Nations* Philip Allott, 2002-10-31 The human world is changing. Old social structures are being overwhelmed by forces of social transformation which are sweeping across political and cultural frontiers. A social animal is becoming the social species. The animal that lives in packs and herds, family, corporation, nation, state is becoming a member of a human society which is the society of all human beings, the society of all societies. The age-old problems of social life, religious, philosophical, moral, political, legal, economic, must now be addressed at the level of the whole species and the level where all cultures and traditions meet and will contribute to an exhilarating and hazardous new form of human self-evolving. In this book Philip Allott explores the social and legal

implications and potentialities of these developments in the light of the general theory of society and law which is proposed in his groundbreaking *Eunomia New Order for a New World* *The Sel-revelations of God ...* Samuel Harris,1886

Structure and the Metaphysics of Mind William Jaworski,2016-03-04 *Structure and the Metaphysics of Mind* is the first book to show how hylomorphism can be used to solve mind body problems persistent problems understanding how thought feeling perception and other mental phenomena fit into the physical world described by our best science Hylomorphism claims that structure is a basic ontological and explanatory principle Some individuals paradigmatically living things consist of materials that are structured or organized in various ways Those structures are responsible for individuals being the kinds of things they are and having the kinds of powers or capacities they have From a hylomorphic perspective mind body problems are byproducts of a worldview that rejects structure Hylomorphic structure carves out distinctive individuals from the otherwise undifferentiated sea of matter and energy described by our best physics and it confers on those individuals distinctive powers including the powers to think feel and perceive A worldview that rejects hylomorphic structure lacks a basic principle which distinguishes the parts of the physical universe that can think feel and perceive from those that can't and without such a principle the existence of those powers in the physical world can start to look inexplicable and mysterious But if mental phenomena are structural phenomena as hylomorphism claims then they are uncontroversially part of the physical world for on the hylomorphic view structure is uncontroversially part of the physical world Hylomorphism thus provides an elegant way of solving mind body problems *Fraud and Risk in Commercial Law* Paul S Davies,Hans

Tjio,2024-08-08 This book focuses on contemporary problems related to fraud and risk in commercial law It has been said by some that we are in a golden age of fraud In part this has been caused by globalisation technological changes and the financialisation of business This has resulted in the creation of automated linkages with integrated supply chains and the creation of systemic risks which have been exacerbated by new forms of intangible assets like tokens and their ease of movement While regulation has ebbed and flowed given the desire of governments to generate economic growth as well as the distrust of their coercive powers the courts have sought to strike a balance between considerations such as commercial certainty and fairness The book provides an analysis of key contemporary issues on the theme of fraud and risk in commercial law including technology and fraud secondary liability and failure to prevent economic crime abuse of business entities insolvency and creditor protection injunctions and other orders cross border issues the relationship between regulation and private law and solutions for policy makers ***The Harmony of Divine Truth*** Seth Williston,1836 *Law*

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