Editorial

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1. Introduction

Volume 2020 is the first volume of the new journal DPSP Annual. It is a triple-thick volume, containing the proceedings of ten years of work for DPSP. Contributions to the first two DPSP Symposia (held in 2013 and 2014) were published on the website in 2014 and 2015 as peer-reviewed scholarly publications. When DPSP started it was believed that the new attention for open access would lead to the invention of a form of registration of web publications that would support their recognition as scholarly articles. It became clear in 2015, however, that peer-reviewed publications placed on a website, financed by a university, written as contributions to a scholarly symposium, partly financed by the Dutch Royal Academy (KNAW), would not be acknowledged as scientific publications. It took some time to find a solution to this problem. The result is DPSP Annual. The publication troubles significantly delayed the editing process of the contributions to the Third Paul Scholten Symposium in 2015 and were the reason for not organizing another DPSP symposium until 2021. Another reason that this first volume is super thick, is the fact that it contains the English language translation of the largest of Paul Scholten's texts as well as the adapted reissue of the original text.

2. Mission of DPSP Annual

DPSP Annual creates a platform for discussion about two philosophies of life that are foundational for two different disciplines: law and sociology. Each philosophy of life has a different view of the relationship between theory and practice. In the philosophy of life of the old European academic tradition, which is foundational for law, theory was conceived to be highly speculative, while the legal practice in the courts reflected the common daily

experiences of people. It was assumed that the generalizing aspect of theory could be fruitful for legislation and could lead to a more stable and just legal order. Court practice, however, should have the last word as representative of the truth value of the daily experiences of individual subjects. In the philosophy of life of the contemporary welfare theoretical tradition, which is foundational for sociology, a different conception of theory was introduced: science, which is seen as having empirical truth value. In this philosophy of life science has the last word. DPSP Annual aims to stimulate a discourse which addresses the implications for law and politics when science has the last word. This discourse will be driven by the writings of Dutch legal scholar and philosopher Paul Scholten (1875-1946). Scholten critically discussed the intellectualism of the new conception of science and its implications for the practice of law.

3. Scope of the DPSP Research

Philosophy of life is the study of the collective life of a people to discern common values, i.e. generally accepted ideas about the good and the bad. Three different philosophies of life related to law are distinguished here: 1. Aristotelian, 2. Deist and 3. Sociological.

3.1 Aristotelian Philosophy of life

Aristotle investigated the life of animals and people empirically. He did a lot of descriptive biological work and made a comparative analysis of the constitutions of different Greek cities. Aristotle developed a teleological/functional method to categorize and explain his research material. He conceived his theoretical explanatory work as highly speculative i.e., as a philosophy of life. He did not mean speculative in a pejorative sense, but as indicating the awareness of the fact that theorists could only acquire general knowledge about collective life by making abstract conjectures about common goals and functions which give meaning to what humans and other animals see and do. These conjectures were highly subjective and insecure, according to Aristotle, and he explicitly rejected Plato's belief that these conjectures could be conceived as commonly shared meanings. Notwithstanding the speculative character of Aristotle's studies, they informed his description and analysis of the Athenian constitution. Because of the speculative character of the political theories which inform legislation, it should be left to practitioners in Aristotle's view to decide how to deal with legislation. Aristotle's rejection of shared meanings was fundamental for his view on Court practice. In his conception Court practice concerned conflicts between contrary, legitimate definitions of the same events. Court protocol (enacted in Athens by the Council) was directed at elucidating the practical implications of the conflicting definitions in each case, in addition to the different ways in which these practical issues could be solved. Court protocol also required a judge (the Assembly or office holders) to take a position on values by making the statement, "for this case this definition is declared valid," and to ensure that the practical implications of this statement were enforced. The knowledge, acquired in a legal practice, of "how to do law" did not concern insight in the fundamental laws of social life, in the academic view. This knowledge was oriented at

practical utility. It was a form of archiving, bringing a degree of order in the conflicts that came to court and in the arguments that were used. [1]

3.2 Deist philosophy of life

The Deist philosophy of life turns Aristotle's view on the relation between theory and practice upside down. With the arrival of the French Revolution a large legislative project started. The European tradition of judge's law was analyzed, rationalized, unified, and centralized via codification (France), through the principle of precedent (common law systems) or via scientific systematization (German Historical School). During Enlightenment, the idea of a correspondence between concepts and reality had been accepted. Kant defined Enlightenment in terms of the courage and duty to think categorical: not the variable, individual elements, but the general objective elements were relevant. Legislation should be based on the objective study of social life. Kant's separation between Sein and Sollen would seem to contradict or undermine this union between the good and the true, but as his essay about the conflict of the faculties [2] shows, only Sein matters to him as it is the true and the good, while Sollen refers to blind obedience to written orders. The scientific systematization of judge's law by Germany's Historical School (von Savigny and Hegel) seems at first sight similar to Aristotle's comparative analysis of the constitutions of the Greek cities. The difference is that the idea of a correspondence between concepts and reality had generated the development of rigorous classification systems, like the Linnaean system. [3] The most fundamental concepts of these classifications were thought to reveal - by logical deduction instead of by conjecture - the real essences of the world, the general goals and functions of all things. [4] Every existing individual thing could find its place in such a system. In terms of law and politics it meant that legal practice was understood as a scientific legal practice by which a people (nation or Volk) could develop a rigorous legal classification system, that would reveal a collective realization of mental progress and a common understanding of the morally good and the true state of affairs in the nation.

3.3 Sociological philosophy of life

At the end of the nineteenth century Deism was rejected by many different schools of philosophical thought, including Neo-Kantianism, Positivism and Pragmatism. This meant rejecting the idea of a correspondence between concepts and reality with its method of rigorous classification. The philosophy of life of the Neo-Kantian Rickert for example aims to investigate the individual, variable, aspects of reality and re-introduces a teleological and functional method, which is comparable to the method of Aristotle. Even though these schools fell in many respects back on the European academic tradition prior to the French Revolution, they all held on to the function of science in realizing progress, and to the subordinate role of practice. The scientific progress is thought to emerge - through a process of learning and feed back - from a lawless random process in which every individual researcher does exactly as it likes – as long as it is transparent what the researcher does, and as long as leaders and structures create no prohibitions. [5] The

condition of transparency can only be fulfilled when people understand each other: the scientific method of the sociological philosophy of life is 'Verstehen'. In the Aristotelian view this belief in commonly shared meanings is rejected.

The different schools all shared a sociological philosophy of life, as elaborated by Comte and Rickert in particular.

- Comte -

August Comte (1798-1857), founder of positivism, sociology and political liberalism, developed a new model of democracy which he juxtaposed against the constitutional model of the Deist codification movement. According to Comte, the constitutional model of 'trias politica' was the expression of a hostile negative attitude towards the government of the French 'ancien régime,' which hindered vital new societal developments. This negative attitude would in time be supplanted by the positive attitude of a welfare theoretical model, which would also involve three political powers: 1) the public and the whole of their coordinated preferences; 2) scientific publicists, who do not act, but only observe and indicate the means for attaining the political goals of the public as detected by them; and 3) the political leaders who deploy the means for attaining the political aims. Two aspects of Comte's view merit extra attention: the threat his model poses to law in favor of a strong, central role for government, and the crucial new political role of the scientific publicists who have the task of detecting and coordinating the preferences of the public and indicating the means to realize them. [6]

Concerning the threat to the role of law: the citizen has far less political power in the constitutional model 'trias politica' than within the legal structure of Europe prior to the French Revolution. The French Revolution started a massive movement toward legal unification, creating an important and central role for national governments. Comte took the further development of this movement as a given and applauded it. Law is viewed as a set of rules in both the 'trias politica' and the welfare theoretical model. The practice of law is understood in terms of deviating from, implementing or inventing new rules. Action is equated with rule-following. Whether concerning legislative, system or precedent thinking, the subjective point of view that is specific for the old academic judge's law is ignored.

- Rickert -

Concerning the new political role for scientific publicists, Rickert (1863-1936) developed a new scientific method which gave form to the new political role of the scientific publicists. Rickert was inspired not only by Comte's political liberalism, but also by Hegel's conception of the progress of thought. Rickert aimed to weave the ideas of these two Deist thinkers into a social scientific framework for his new sociological method. He based his method on his observation of an existence of a plurality of social practices (such as the legal practice), each with its own meaning configuration shared by its participants. Rickert believed that it was possible to study these meaning configurations scientifically by taking

the perspective of how these practices could contribute to growth in a larger societal frame of values. The legitimate definitions of events which were rejected by the judgment in a legal practice, for example, regain their legitimacy as possible solutions when seen in such a larger overall perspective. Rickert argued that it was possible to gain new insights by taking a progressive, overall perspective in the study of social practices, neutral to the judgments of authorities. Different sociologists will have different points of view from which they do their research, and this will lead to different reconstructions of social practices and their possible contribution to change. History will ultimately reveal the route to progress that was taken. [7]

4. Conclusion

In 1972 Karl Popper asks himself whether the development of scientific progress could become lethal. His answer is that this will not happen. [8] The mission of DPSP Annual could be summarized as creating a platform to reconsider such confidence in blind progress.

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[1] See the last pages of the Nicomachean Ethics for Aristotle's view on the troublesome relation between court practice and legislation. These pages are introducing the Politics which treats the results of Aristotle's comparative study of the constitutions of Greek Cities. For further references to Aristotle see my chapters in Huppes-Cluysenaer and Coelho, *Aristotle and The Philosophy of Law*. Huppes-Cluysenaer and Coelho, *Aristotle on Emotions in Law and Politics*.

[2] *The Conflict of the Faculties = Der Streit Der Fakultäten*.

[3] In the 19th century the erroneous belief was that Aristotle already intended to make a taxonomy like that of Linnaeus. See on this Pellegrin, *Aristotle's Classification of Animals*.

[4] Kant thinks that it is impossible to ascribe to natural products anything like a reference of nature in them to purposes as Aristotle did. He sees it as a moral attitude of reason to believe in that which is necessary to assume to arrive at classification. Kant, *Kant's Kritik of Judgment*., xxv-xxxvii, 17, 409.

[5] "This activity of thought by which we are carried, not where we wish, but to a fore-ordained goal, is like the operation of destiny. No modification of the point of view taken, no selection of other facts for study, no natural bent of mind even, can enable a man to escape the predestinate opinion". In Peirce, *Collected Papers of Charles Sanders Peirce , Part V Pragmatism and Pragmaticism*., 268. See also Popper, *Objective Knowledge; an Evolutionary Approach*., 208-210, 268.

[6] Comte, "Separation of Opinions from Aspirations (First Essay 1819).", 8

[7] Rickert, *The Limits of Concept Formation in Natural Science*., 63,134-6,141-142,181-184 and 212-214.

[8] Popper, *Objective Knowledge; an Evolutionary Approach*., 272-280.