Law and Legal Cultures in the 21st Century:
Diversity and Unity

WORKING GROUPS
ABSTRACTS

1-6 August 2007, Kraków, Poland
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‘UNITY IN DIVERSITY’: QUESTIONS OF (LEGAL) CULTURE IN THE EUROPEAN UNION

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Catchphrases and sound bites are frequently used to communicate difficult concepts that occur within and because of the European Union, often with the result of masking the contradictions and difficulties inherent to them. This paper submits that ‘unity in diversity’ is one such slogan that has been accepted and utilized without a proper critique of what it actually conveys, especially in terms of legal-cultural ‘unity in diversity’ in the process of the Europeanization of law, and that much of the confusion as to the aims of this process are can be attributed to this motto. This argument will be presented in two parts. The first section will discuss both the semantics of the slogan and the paradox that the juxtaposition of these two concepts introduces, and will argue that the optimal way of conceptualizing ‘unity in diversity’ in the EU is as an expression of unity without uniformity and diversity without fragmentation. The second part will look to considerations of culture in order to ascertain whether it is a positive or negative factor for the process of the Europeanization of law, and in doing so will present two alternative dichotomies of the concept, namely: culture as grounds for unity or grounds for diversity, and culture as instrumentalist or contextualist.

THE RIGHTS IN THE EUROPEAN UNION CONSTITUTIONAL TREATY

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The concept of rights in constitutions and treaties usually refer to different kind of rights. In constitutions some rights are absolute rights (human dignity) but many of rights are merely principles which compete with each others. In constitutions there are rights which are more declarative than “really” enforceable rights, moreover. In European legal sphere individuals are addressees of different kind of rights: rights written in national constitutions, rights written in European Union Constitution Treaty (part II) and addressees of norms in human rights Treaties like the Treaty of European Convention of Human Rights (ECHR), also. What do the concept of “right” mean in European Union law context? In the preamble of the Charter of the Fundamental Rights of the European Union there has been stated: “The Union therefore recognizes the rights, freedoms and principles set out hereafter.”? What kind of rights does the Charter “ensure” for individuals in European Union Member States, rights or merely principles? Many so called “rights” in the European Union are traditionally bound to the economical activity. In Baumbast -case (C- 413/99) the European Court of Justice ruled that a citizen of the European Union “who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy a right of residence by direct application of Article 18 (1) of EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality.” Did the ruling of the ECJ widen the scope of application of Article 18 (1)? Is Article 18 (1) the basis for the “rights” or the “principles”? Does the Charter of the Fundamental Rights of the European Union “increase” the scope of the “rights” belonging to individuals in European Union Member States? In Article II-112 (2) of the Charter it is stated “Rights recognized by this Charter for which provisions are made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.” What is the legal status of the rights in Charter norms in the structure of the European Constitution Treaty norms? Second question is how those rights written into the Charter are protected in European Union context? Namely, the “access to justice” is a preliminary to the judicial protection of the rights of citizens. Are the rights written into the Union Charter protected by the European Court of Justice? Or are the rights protected by national courts? Or by ECHR- court? Rights are not real “rights” if they are not enforceable “in practice”, too.
THE DARK SIDE OF EUROPEAN HARMONIZATION: THE EMERGENCE OF A NEW BREED OF PUBLIC-PRIVATE NORMS

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Shortly after the signature of the Rome Treaty it became clear that the diversity of national accounting standards prevented a reliable comparison between European companies. For decades, no real harmonization could take place in this area however, due to the reluctance of Member-States such as France and Germany to adapt their respective accounting systems. To overcome this clash of parochialisms, the EU eventually decided to resort to a form of private subcontracting. This is why, since 2005, all companies listed in a Member State are required to comply with the standards enacted by a private body, the IASB (International Accounting Standards Board). Given the technical connotations of accounting, little attention has been paid to the political implications of this delegation. Yet, deciding what is a profit or a loss is primarily a matter of ideological perception. For this reason, the route followed by the EU is even more disturbing when one realizes that it has no statutory control means on the IASB. In this paper, we show that this privatisation of the regulatory process goes well beyond known forms of transfer of competences to the private sector. We also argue that while diverse, the reasons behind such relinquishment of sovereignty lie more in the intrinsic weaknesses of the EU itself than in a hypothetical “imperialism” of the private sector.

THE RELEVANCE OF RACE: BEYOND COLORBLIND CONSTITUTIONALISM

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Racial discrimination is formally forbidden in Europe and in the United States. This principle is supported through a “colorblind” (i.e. neutral) constitutionalism. In Europe, colorblindness is so strictly applied that no one can make a reference to racial or ethnic data. However, the practice of colorblind constitutionalism could work in a relatively homogenous society where the vast majority of those living in a certain country were nationals. Recent waves of migration have radically changed the role of neutral constitutionalism. Sometimes, colorblindness can become conservative and racist. This paper intends to be a first step toward a theory that establishes when and why colorblind policies should be abandoned. The American experience constitutes a good starting point to explore the role of race in modern constitutionalism. After having outlined the main differences between American and European constitutionalism on the issue of racism, it has to be explained how law affects directly the notion of race. From this point of view, the Critical race theory (CRT) movement offers some useful insights, in particular the ideas that race is a social construction and that race “matters”. Since race is a concept that necessarily implies a plurality of races, the context in which a particular notion of race has been formed is extremely relevant. Thus, the following section is devoted to the necessity of paying attention to the different forms of racism. Those who apply indifferently the same remedies to different kind of racism (like, for example, Arendt in the Little Rock case) risk to reinforce some practices of discrimination. A typical example of the limits of colorblind constitutionalism is racial profiling, in which the police (or other officials) stop and control minority-looking subjects for security reasons. The “war on terrorism” has intensified this practice, not only in the United States, but in several European countries (even though in Europe the use of racial or ethnic profiling is not recognized explicitly). A paradigmatic decision by the Tribunal Constitucional de España – STC 13/2001 – that allows police to stop people only on the base of the colour of their skin in order to contrast terrorism and criminality will be the focus of the final section, where a critique of racial profiling based on the principles developed throughout the paper is offered.

POLITICAL FREEDOM; ENGLAND'S 'LOST TREASURE'

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My presentation will look to the work of Hannah Arendt in order to explore the state of ‘political freedom’ in the context of the British constitution. Focussing on the final chapter of On Revolution, ‘The Revolutionary Tradition and its Lost Treasure’, I will identify, per Machiavelli, the paradox at the heart of constitutionalism as the co-existence within all constitutions of those who ‘have’ political power, and who seek to consolidate and secure that power by domination, and those who ‘have not’ such power, ‘the people’, whose chief desire is only not to be dominated. For Arendt this paradox comes to light most clearly in times of
revolution, and the years which follow its conclusion. Revolutions, she argues, are marked by a striking common characteristic. That is, that at those times when the formal apparatus of the state is at its weakest men did not (at first) revert to a war of all against all but instead formed, spontaneously, new pockets of power, in the shape of non-party political councils in which, she believed, was contained ‘the revolutionary spirit’. This spirit was one of a ‘new beginning’, an entirely new form of government in which everyone could participate in public affairs. The contrast however with the spirit of the revolution was, ironically, its “success” in founding lasting institutions; institutions that is to say which sought to close down the revolutionary spirit in order to protect or expand their own power. I will argue that the English constitution too has its lost treasure, which emerged in the explosion of ideas which followed the decline of the reign of Charles I and the onset of civil war. In a time marked by a great shift from theories of divine right and absolute monarchy, it was the Levellers, a non-party organization with no coherent agenda, who best understood the implications of locating the source of authority in the power of the people by seeking to increase the participation of the people in their government, chiefly by making government accountable to the people themselves; before the group were put down by the dominant New Model Army. I will focus my presentation not primarily on the historical tale but of the possibilities for constitutional theory today which might be realized by retrieving some of that ‘treasure’.

BETWEEN SILENCE AND NOISE: ACCESS TO LAW AND JUSTICE AS A HUMAN RIGHT FOR/OF COMMUNICATION AND UNDERSTANDING

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The right of effective access to law and justice has been gaining more and more recognition, being nowadays considered of vital importance, necessary to provide equal access to justice and to legitimate the State and democracy, thus strengthening citizenship by including citizens and promoting their participation. Based on such assumptions, considerations will be made on how the models of access to law and justice have evolved, being a classic argument that without legal assistance one cannot use the legal system effectively. Along with such argument, some remarks will be made on how legal language and judicial architecture can be perceived as possible obstacles to the access: one strategy that has been called upon is the simplification of laws and procedures so as to reduce the need for external assistance, as well as informalization inside the courtroom or its application to the traditional imagery of courts. In such reflection, it will be taken into account the influence of the Council of Europe and of the European Union, as we live in a globalized world and, more particularly, we are part of a regional level, that is Europe. In a more specific level, a brief thought will be made on my reality, which is the Portuguese context.

THE POLITICAL PHILOSOPHY UNDERLYING THE SPANISH CONSTITUTIONAL BREAKDOWN

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The intention of this paper is to show that the current Spanish constitutional breakdown is based on two errors. The reforms in the territorial model of the state, such as the Catalanian Statute of 2006, were carried out in accordance with procedures established in the Constitution referring to the amendment of the Statutes of Autonomy. The first error consists in amending the constitution scrumptiously by means of the reform of a Statute of Autonomy; this responds to a concrete interpretation of the constitutional model as a majoritarian conception of democracy, permitting reform provided it is supported by the majority (at least 176 out of 350) of the representatives. However, this does not correspond to the procedures established by the 1978 Constitution for its own amendment, which demands that it be carried out by a special majority (at least 210 or 233 out of 350, depending on the extent of the reform); the reason is that fundamentally the constitution is nearer to a different model of the majoritarian, the partnership democracy conception. Furthermore, there is a second serious error, and that is a misunderstanding of the majoritarian conception of democracy, because it, too, has limits that have been forgotten: self-restraint and feeling for the constitution.
CONSTITUTIONAL COURTS AND THE LIMITS OF ECONOMIC POLICY: REFLEXIONS ON THE HUNGARIAN EXPERIENCE

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This paper focuses on the role of the Constitution and its judicial interpretation in the formation of the market economy in Hungary. Through interpretation (implicit constitutional changes) the Constitutional Court constrains effectively the government’s power over monetary and fiscal policy, economic and social regulation, taxation and redistribution. Consequently, the institutional framework of the Hungarian economy bears the mark of the Constitutional Court's decisions in crucial aspects and it continues to be shaped by Court rulings. First, I give a selective and critical overview of the constitutional framework of the economy in Hungary. I discuss economically relevant elements of the constitution, including the protection of property rights; freedom of contract and enterprise; social and welfare rights; and the power to tax. Then I move to some general considerations on the economic consequences of Constitutional adjudication. As I shall argue, the Hungarian experience raises more general questions about the interrelations of law and economics and the role of economic reasoning in judicial review. The decisions of the Hungarian Constitutional Court do not follow any well-established line of economic policy or principle. On the doctrinal level there is an ambivalence between right-based and consequentialist arguments (and compared to other European countries, the decisions remain under-theorized in doctrinal commentary). The Court accounts for the often significant macroeconomic effects of its rulings in an unsystematic and improvisatory manner. These effects, however, can be assessed in light of constitutional political economy. From a positive perspective, the main patterns of the constitutional court's decisions can be explained from its interaction with other constitutional players. From a normative perspective, this line of literature contributes to the critical evaluation of the often contradictory tendencies in the decisions (deference to the legislative intentions in institutional reforms; setting social limits to property rights; intervention in defense of welfare benefits).

ON THE NATURE OF THE LEGAL DECISION

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Everyday experience of the legal professionals is that law is changing. Numerous new legal materials enter into force day by day in various fields of social and personal life according to the current policy of the government. Law seems to depend, after all, on the lawmaker's will. This impression is supported by the popular positivist approach that law is the result of human action and nothing else, so its content is indeterminate. How can this picture reconcile with the general aim of law to serve the predictability of actions? My statement in this paper is that this point of view is blind for what is called the „nature of things”. The nature of phenomena determines the content of law on two different levels. First, obviously, the different type of actions and their circumstances involve different type of rationality. Therefore, lawmakers can not ignore the requirements arising from specific cases. This is the classical argument of „nature of things”. On the other hand, making legal decision also has a nature which shows us how to make good decisions in certain circumstances. None of these two features let make arbitrary law, even if legal rules might be various. I think the characteristics of the legal decision appear much better in jurisdiction than in legislation.

To discover the „know-how” of making good decisions we need to be attentive to the development of the case-law, such as roman law, common law, and the jurisdiction of constitutional courts and international courts. Jurisprudence needs to consider primarily the decisions in particular cases and not the creation of general rules. It facilitates to see what kind of knowledge we need and what kind of effort we have to do to find the right answer for a particular practical problem. First is the practical problem which has its own circumstances, and their analysis is followed by the solution. This solution may be a universal one for all similar cases provided that it stands the review of the subjects concerned. In this way law will not force its own (or anyone else's) interests to regulate actions and institutions and it might preserve its authority easily.
CONCEPT OF LAW: THE CERTAINTY GERMINATING FROM ABERRATIONS
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The leaping advances in Eastern Europe during the late 1980s drove post-socialist countries into motion along the historical time axis at speeds unknown in the “old” world. This gave rise to social-legal phenomena that are widely furnished in regional studies but that, from the common sense point of view, are “abnormal”. At the same time, it became clear that classical, human rights-centred but conditionally “static” jurisprudence has not yet developed the scientific apparatus to explore these new and essentially dynamic phenomena and describe them either qualitatively or quantitatively. These phenomena may, of course, be explained by the merely undeveloped state of a system of law and its regulatory models. Alternatively, as it often occurs in many sciences, it might manifest a next grade of our comprehension of routine concepts’ contents such a concept of law is. It may indicate the new - non-linear, relativistic - features of a social-legal matter as far as its existence is presupposed on analogy with material matter. Cases of practice persistently convince us of the truth of this analogy giving proves that the principle of legal certainty does not work there anymore - even to the extent it worked previously in a case of socialist law. This leads to the idea that the practice throws us down a challenge of discovering its new outlines of the very concept of law - right up to accepting quasi-relativistic nature of the social-legal matter (built on the principle of uncertainty similar to quantum mechanics). To explain transitional legal phenomena in this way is more rational than to ignore it - as the true theory of relativity in the material world puts it, having objective character abnormal effects exist always and everywhere, but evince themselves only on special conditions and disappear when a system acquires classical characteristics. During the breakthrough in development of social-legal matter one may see the persistent manifestations of this such as the duality of the social-legal reality or quasi-tunnelling effects – it is worth just to stare at the bright events of Ukrainian Orange revolution of 2004-2005 and its two year later White-blue parody-counterpart. Interpretation of the latter in the vision above will be a subject of the paper.

MANAGING DIVERSITY: ACCOMMODATING DIVERGENCE IN EUROPEAN HUMAN RIGHTS LAWS
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Forecasting threats of divergence between the ECHR and the EU with regards human rights protection has been a favorite topic in academic writing for some years. However, these visions of divergence have failed to achieve more substantial conclusions than asserting possibilities and threats of divergence as opposed to identifying differences that would lead to actual non-compliance, a conclusion any divergence claim ought to seek. This impotence of the divergence claim, I suggest, results from how its promoters envisage difference between legal systems and how they approach managing that difference. Their vision of difference, best described as the monist approach, sees divergence as a conflict between legal systems and the remedy they can prescribe applies concepts such as supremacy and submission. They speak of standards and compliance, which, however, appears fruitless when their conclusions cannot identify genuine shortcomings in relation to those standards. Conversely, when one subscribes to a pluralist vision of difference, divergence between legal systems becomes much more approachable. When divergence is not regarded as a conflict but accepted as intrinsic to the coexistence of plural normative orders, and when divergence is not seen as demanding an urgent remedy but requiring it to be managed, difference ceases to be a despised legal phenomenon. On the basis of accepting and accommodating difference one may commence undermining the sustainability of the divergence claim, as the pluralist vision enables advancing a claim of non-divergence that contradicts claims of divergence, which are ignorant of legal systems being able to accommodate diversity. In the ECHR-EC relation the implementation of such pluralist approach towards divergence requires exploring mechanisms of flexibility that enable accommodating diversity within each of the legal systems. In short, the subsidiarity of ECHR law, by virtue of its margin of appreciation doctrine and the flexibility characterizing the scope of some of the rights under the ECHR, is a prime example of a legal system being able to manage difference arising from the diversity of the participating legal systems. Community law with is deference in human rights issues where appropriate towards national legal systems, which are in fact the genuine forums of human rights protection under ECHR law, is able embrace difference too. Consequently, the non-divergence claim with respect to human rights protection in ECHR and EC law could profit from a pluralist vision of difference that can manage diversity through mechanisms of flexibility. However, normative systems, more precisely supranational legal systems that strive on compliance, when it comes to the question of difference cannot rely exclusively on a pluralist approach towards difference. Their potentials in accommodating
diversity are halted by the very aim of those legal systems that is to ensure that their normative content is obeyed. In this respect the non-divergence claim, besides resorting to mechanisms of flexibility, must put forward observations on compliance by establishing manifest similarity between those normative requirements of the legal systems concerned that demand compliance. Nevertheless, with such combination of pluralist flexibility and manifest similarity a non-divergence claim in respect to ECHR and EC human rights protection can fare better than any monist divergence claim.

THE USE OF COMPARATIVE JURISPRUDENCE AS A TOOL OF LEGAL TRANSITION IN CENTRAL EUROPE

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The structure of judicial reasoning in hard cases is changing: some may call it „globalisation of judicial discourse“, „global community of courts“, „transnational judicial dialogues“ etc. I called it simply „judicial copy and pasting“. When arriving at decisions in purely domestic cases, i.e. in cases where no consideration of foreign law is required, judges do gradually take into account foreign (comparative) law, especially decisions of other courts. What role does comparative law play in the judicial decision making in Central Europe? Should it play any role at all? The paper has three parties: in the first one, a review of the style and technique of judicial “borrowing” in the Czech Republic, Slovakia a Poland is effectuated, focused on the court of public law, i.e. (Supreme) Administrative Courts and the Constitutional Courts. On the basis of an extensive review of individual cases, following questions are asked: Who do these courts use to refer to? Which country (countries) are seen as the “authority” and why? How is the comparative law argument structured? Is it a substantive reason or just a subsidiary one? Is the foreign inspiration always openly cited? If not, why was it withheld? The second part of the paper seeks to reconcile the wide-spread practice of judicial borrowings in Central Europe with the “dogmatic” legal theory in the region. In theory, comparative reasoning is seen as the “exotic” method of interpretation, subsidiary only and coming in once all the other “traditional” interpretation tools have failed. In practice, however, comparative reasoning is used as a powerful tool of overriding the perceived domestic deficiencies and the “traditional” interpretation. What does this mean for the “classical” Savigny-like model of legal interpretation and the exclusivity of national sources of law? What is precedent? What is authority? Is law and judicial interpretation of it the interpretation of a closed normative system or is it just the search for the “best fit”, the most reasonable solution of a social problem, irrespectively of the origin of the solution? The third part of the paper finally places the “borrowing” practice into the broader transition picture in the post-communist Central Europe. Is the (relatively) extensive use of foreign sources in judicial reasoning just a temporal replacement of inexistent national case law and literature, which will gradually be diminishing? Is there a constituency judges wish to please by showing that they do the things “like them”? Should the argument that “the civilised world” does it this way be convincing or conclusive on the national plane?

UNIVERSAL LEGAL VALUES AND THEIR ADAPTATION IN THE CULTURE OF THE NATION

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It is highly important that new democracies find an optimal ratio of the universal, civilization-developed features of law and specific cultural features of law, as the legal system that is being reformed, on the one hand, needs to be rooted in universal legal values and principles and, on the other hand, has to maintain relation with a specific cultural legal tradition. In the contemporary philosophic discourse there are two opposing trends. Liberals stand for the universal character of the idea of law for all cultures. Communitarians, standing particularistic grounds, deny the universality of the idea of law. They emphasize the diversity of cultures and their attempt to protect their identity. Rejecting the extremes of the excessive universalization and particularization of the idea of law, the issue could be resolved through simultaneous admission of the idea of law as a universal value foundation for the modern civilization and of the ways of its justification that are specific for each culture and are determined by the peculiar national character and national world view. Certain features of both Russian national character (moral maximalism, distrust to the formal aspect of culture) and Ukrainian national character (emotionality, value ambivalence) create difficulties in the course of shaping national legal consciousness but are not an insuperable obstacle for admission and justification of the universal content of the idea of law. These difficulties condition a peculiar motive for the justification of law, that is, existential motive of the creative self-realization of the individual. Formation of this ideal is also related to the general
humanistic intellectual tendency, going back to the religious and romantic “philosophy of heart”. In Ukrainian philosophy of XVIII – XIX centuries this tendency is expressed through symbolic and ontological concept of law by G. Skovoroda; in the heritage of T. Shevchenko it shows in seeking the spirit of the “just law”; in the philosophy by P. Yurkevich it shows in the search for the criterion to settle pecuniary conflicts in the heart. Russian philosophy of law of the late XIX – early XX centuries embodies the motive of creative self-realization in various formats: in religious and metaphysic justification of right to a dignified existence (V. Soloviov); in moral justification of the ideal of “free universality” (P. Novgorodtsev); in the idea of personality as a criterion for the legitimacy of law (B. Vysheslavtsev). The post-Soviet philosophy of law expresses correlation of the universal legal values and national cultural traditions through the justification of the ideal welfare-oriented rule of law state. It is interpreted as a state that ensures dignified existence for individuals, that is, guarantees equal conditions of creative self-realization of the individual.

UNIVERSAL VALUES IN CONSTITUTIONAL PREAMBLES (ON THE EXAMPLE OF CENTRAL AND EAST EUROPEAN COUNTRIES)

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It would be hard not to appreciate the significance of the correlation between law and values. There are certain values which find their direct expression in legal acts, they are openly named for what they are. Such expressions can be found particularly in the texts of constitutions, which specify values formally binding entities responsible for the creation and application of laws. Constitutional preambles are particularly rich in references to values, regardless of varying views on the normative character of those sections of constitution. A question arises, however, whether any universal values can be found among the actual values stated in constitutional preambles. The notion of “universal values” refers to those serving the broadest group of entities possible and accepted by everyone (or nearly everyone). By necessity, the following discussion will be limited to a selected group of countries. The choice of Central and East European states is not accidental as it generates interesting questions to be considered, particularly in relation to the systematic transformations which took place therein after 1989. Furthermore, the issue to be discussed will be the extend to which given values may be treated as “universal”, in the sense that they remain in force on global (universal) scale and to what extend they are valid only in the context of a given culture? Naturally, they will be easier to catalogue against a given civilisational background, but the question of retaining their “universal” quality still stands. Certain values named in the analyzed constitutional preambles are referred to as “universal”, others, although not directly defined as such, can be argued to fall under that category. The latter may in fact be of greater significance, as they give a fuller insight into the life of society. Although certain values are more mentioned that others, thus aspiring to the category of “universal”, there is no fixed system or exclusive catalogue of the same. None of the analyzed preambles attempts to provide such catalogue, although a certain, common axiological base may be observed, a shared foundation which allows states and societies to prevail. They constitute the “communal order of values” and it is certainly no accident that it is evoked by the constitutions of numerous states, including the Treaty establishing a Constitution for Europe which incorporates the notion of “universal values”. The above include, in particular: peace, freedom, democracy, justice, equality, solidarity, tolerance, responsibility, remembrance the past as well as human dignity and human rights.

PERSPECTIVES OF NATIONAL LEGAL CULTURES IN THE EU

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The introductory part of the essay deals with the notion of legal culture and its categories. Later, the author sets forth the characteristics of the common law and the Roman – German legal cultures, including the legal families within them. He also touches upon the tendencies of the development of the German legal and political culture. With respect to the integration of the legal systems into the EU, the author argues as an advocate of convergence. Both basic legal cultures are being modified, as besides statutory law, judicial law becomes significant in the continental legal systems and statutory law complements case law in the common law systems. As to the integration of the Hungarian legal culture into the EU, the essay points to two principal considerations. On the one hand, when working on making our legal culture “euro-conform”, we must not forget about maintaining our own legal culture. On the other hand, the Hungarian legal culture can contribute to the development of the legal
system of the EU, e.g. with some of the regulations of our statute on the ethnic minorities. At the end, the author shows that the efficacy of the European law is heavily dependant upon the national legal systems.

HUMAN RIGHTS AND DEBT COLLECTION: CANCELLATION OF WATER, HEATING OR ELECTRICITY CONTRACTS DEPENDING ON THE LACK OF PAYMENT

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This paper aims to evaluate and explain why it is against current law and human rights, which are guaranteed by international agreements, to force people to live in conditions against human dignity by debt collection, especially cutting off electricity and water because of unpaid bills. It shall be unnecessary to explain the importance of water and electricity in our lives. It is unacceptable for any citizen to not to have water, electricity or heating in his/her house in our century. It is completely inaccurate to cut off basic needs, which are served by a monopoly of the government and/or a company of water and electricity, depending on the lack of payment. It is a necessity to let all people live in dignity, even if they are under a legal action for collection of a debt. In this paper, Turkish Execution and Bankruptcy Act and its practice will be evaluated with regard to human rights principles, and especially water and electricity services will be focused.

GARANTIA DA SUBMISSÃO À ESTRITA JURISDIONARIEDADE E TRANSAÇÃO PENAL: ANÁLISE CRÍTICA À LUZ DO SISTEMA GARANTISTA DE LUIGI FERRAJOLI

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This article analyzes the Assurance Process of Luigi Ferrajoli, bringing up for such one of his approaches (the most interesting in our opinion) that permeates itself by the principle of the strict jurisdictionality. Besides approaching the penal transaction institute, evidencing some of the several discussions that involves it, approaches specificity the principle of the strict jurisdictionality. Emphasize how the penal transaction institute, evidenced some of the some quarrels that involve it. Thus show that the referred innovation brought by the law 9099/1995 is, in fact, the penal sanction of Non Guaranteeist matrix, for applying penalty to the individual in such a way to surround him/her with prosecution guarantees mentioned in the Republic Constitution of 1988, such as the principle of the presumption of innocence, of broad defense and of the contradictory. Finally, we aim to focus how the criminal procedural law must deal with the most aggravating conducts (minimal intervention) and that the institute on the screen, the way it has been applied in our country, needs improvements in order to match with the normative structure of a State of Law.

MIRCEA DJUVARA AND ITS CONTRIBUTION TO THE ROMANIAN PHILOSOPHY OF LAW

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Mircea Djuvara (1886-1944) is, for the Romanian philosophy the most important author, legal adviser and philosopher. He was a professor at the law Faculty in Bucharest, International Law Academy in Prague, prestigious universities in Prague, Paris, Rome, Vienna, Marburg and author of over 350 papers and studies on the philosophy of law. His ideas were obviously influenced by his legal knowledge. As Del Vecchio, Djuvara does not separate law from philosophy, thus legal philosophy appears as a field of law, concepts that cannot be understood without a general, epistemological, philosophical understanding. Mircea Djuvara doctrine goes beyond the field of law. His legal philosophy has serious political implications. The concept of “systematization” implies equality between all terms implied, that is to respect the individuals, legal subjects that generate legal coherence. Mircea Djuvara also studies the philosophy of law, analyzing the ideas of the middle age, Renaissance, formal law from the enlightenment age and the reaction of the historical school and legal positivism which denies the values of the critical idealism. In philosophy, Mircea Djuvara is Kantian. For him, the ethic-legal world is is distinct from the material and psychological universe because it is a world of values constituted by the practical intellect. Djuvara considers that liberty cannot be understood as a psychological phenomenon. The nature of the knowledge act which cannot be material or psychological is logical. From this point of view logic creates the whole universe. The logical act of knowledge cannot be restrained to the real
causal law. His main contribution was to have enlarged the ideas of his time from literature to politics and law. He developed the system by giving a doctrine based on the Kantian doctrine but with important implications in his country. He used his critical vision and his concepts in matters related to the state, nation, the idea of convention the international order and the methodology of law.

THE CONNECTION BETWEEN LAW AND RELIGION IN FAR-EASTERN COUNTRIES
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In my paper I will introduce some special legal cultures possessing way of thinking hard to understand for western jurists, where tradition and religion precede the law: the grounds of social order and jurisdiction are not based on the law. I will show the characteristic features of Japanese, Chinese, Korean, Vietnamese and Indonesian legal cultures. I intend to examine the geographical, the historical and cultural reasons, the special character of people from the Far-East, their religions, and the influence of these on jurisdiction. The last stage of the research would be the modernizing problems and bounds of the legal systems of these countries.

CORRELATION OF CONCEPTS OF TIME, SPACE AND THE LAW IN JUDAISM
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We have made an attempt to analyse formation and evolution of attitudes of Jewish people to the concept of the Law during the history of this people. Moreover we have tried to consider interrelation of religious tradition and the attitude to the Law, considering influence of religion on ideology and world view of Jews. The religion has exerted strong enough influence on formation of outlook of Jewish people and till now continues to play a significant role in a life of Jews. The attitude to the Law and overview about its role in a life of a society, certainly, are a part of outlook and being an element of outlook they have experienced on themselves influence of religious tradition. It would be desirable to note, that the attitude to time and space, peculiar to Judaism and presented first of all in the Bible has defined specific features of interrelation of Jewish people and the Law. As the methodological bases we use concepts of the Law presented in Bible, rabbinical literature and some modern legal documents of Israel. As a result of carried out research we can approve, that attitude to the concept of Law which is presented among the Jewish people depends of course on religion views and also on concepts of time and space in particular.

SOCRATES’ JURISPRUDENCE
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In my paper I provide an outline of Socrates’ jurisprudence. My main focus is Plato’s Crito. In this dialogue Socrates argues that proper respect to the Laws requires that the citizens either try to persuade the Laws if they think that the latter are wrong or obey them. In my paper I argue for the following theses: (1) Proper respect for the Laws requires that the citizens conform with the intent of the legislature rather than to each and every law. (2) When a specific law contradicts the intent of the legislature the citizens have a moral duty to try to persuade the Laws and, if they fail, to disobey. (3) The citizens have both a legal duty not to disobey without trying to persuade and two legal liberty-rights, a legal liberty-right to try to persuade and a legal liberty-right to obey. (4) When trying to disobey the citizens should engage in a process of legal interpretation informed by the principles of the Socratic dialectic, i.e. his elenchus. I end my paper with an analysis of how Socrates applies these principles of legal philosophy in other Platonic dialogues and how he accounts for his disobedience of actual legal directives in the Apology.

FEMININE ALTERITY AND LAW: ANTIGONE’S DISSIDENT AGENCY
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In this paper, I would like to focus on the tragic figure of Antigone, the heroine of Sophocles’ drama; I would like to reflect on that suspended figure of disobedience and revolt, by focusing on her own ways of performing the law. Her autonomy and agency
emerges through her own reiteration -a simultaneous assimilation and repudiation- of the heteronomous idiom against which she rebels. In her “stubborn” and drastic claim of justice to tend the exposed dead body of her brother Polynices, who has been declared a traitor and thus denied the honor of a proper burial, she enters into an irresolvable and violent conflict with the head of the state - the tyrant of Thebes - and her maternal uncle, Creon. How does Antigone manage to oppose Creon’s authoritative verdict of her deadly exclusion from the polis and moral law? What, if any, language of resistance and critical redeployment is available to a marginalized, condemned, and stateless Antigone? Is she able to reclaim a political agency in the shutters of her living death? As Judith Butler so aptly discusses in her book Antigone’s Claim: Kinship between Life and Death, Antigone’s rhetoric mimes Creon’s sovereign language; Creon’s utterances of absolute power are echoed in Antigone’s language of insurgence. However, as Antigone replicates the sovereign’s rhetorical strategies, she redoubles them in her own idiom while at the same time she confirms them. I am particularly interested in the ways in which the tragic figure of Antigone unsettles Kant’s notion of the sublime and Hegel’s formulation of the dialectic, as the claim conveyed by Antigone’s acts of simultaneous reiteration and repudiation is neither merely aesthetic nor merely dialectic. Antigone can be understood as a figure that resists assimilation or transvaluation into synthesis, and, as such, complicates not only Hegel’s attempt to “reconcile” or “sublate” hierarchies of identity/difference, but also a certain closedness and seamlessness that permeate his system of dialectical oppositions and progressions. Also, the figure of Antigone is suggestive of Kant’s notion of the sublime sacrifice, whereby imagination sacrifices itself, turns its violence against itself, for the sake of the “delight” of moral law, the ethical totality. Her resolution bears –or, suffers (υπο-φέρει)- the trace of the absolute – unpresentable and ungraspable; her capacity of taking a pure interest in the law touches upon the emotion of sublime disturbance.

PLAYING THE LAW: ON MUSICAL PERFORMANCE AND LEGAL INTERPRETATION

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Law, as Music, is a two-stage art - it needs to be interpreted to exist. The aim of this paper will be to show, with the aid of music, the dialectical tension that occurs between the production of the legal text and its subsequent interpretation. In the first part I will examine in what sense it is possible to establish a comparison between legal and musical interpretation, with a brief reference to a more general perspective of Law and Music, enriched with references to the transformations of the work of art in the hermeneutical philosophy. Striking similarities between legal and musical interpretation will be issued, especially on the use of musical metaphors in legal interpretation scholarship, the duality of fidelity vs. freedom of the interpreter, relativity of interpretative directives, problems raised by the ‘originalist’ approach to interpretation. In the second part, the possibility of using concepts such as performance and improvisation in legal interpretation will be introduced and discussed. To do so I will examine the ‘law as performance’ theory, elaborated by J. M. Balkin and S. Levinson, as well as the concept of “art à deux-temps” (two-stage art), as developed by H. Gouhier. After a critical assessment of these theories, their use in legal interpretation will be discussed, trying to establish a comparison with the Law and Literature approach. This will lead to a final and more general critical consideration of the relationships between interpretation, argumentation and execution of legal texts.

A METAPHOR: MUSIC AND LAW

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Is it possible to listen to Law as if it were a song performed along the centuries subject to the influence of the spirit of each time and space? The definition of what Law is, when an interdisciplinary approach is concerned, can be built from the point of view of the music history and the interpretation. Judges and musicians are interpreters of the past as well as legislators and composers create for the future. Although they have different objectives, music and law interact as part of the human culture.

INTERNATIONAL NETWORK ON GLOBAL LEGAL THOUGHT

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Is contemporary legal thought undergoing a global change? Is there an international dimension to legal theory? With this perspective, we can look at the legal profession as a whole and see how it encounters new practical issues. We witness a
growing dialogue between law and social science. Comparative law investigates this exchange. This Network stems from one question: Is global legal thought emerging? Legal thought can be open to other disciplines and can be driven by political action, in spite of increasing differences between theoretical points of view and political options. New venues for legal thought include more theoretical debates and social stakes. First, contemporary legal thought convey an epistemological critique which questions the rules of thought and action (either “common sense” or legal doxa) drawing from the social science. This critical approach of law is crucial to define to define all norms. Secondly, critical thought is also a social critique. It contributes to the debate on fundamental rights and their practical impact. However, each legal culture (national or continental) gives a specific place to the characteristics of contemporary legal thought and it can be stimulating to point out differences, common ground and influences between cultures. We want to create a global Network of individuals, research laboratories and any interested bodies, with the aim of exchanging information and analysis on the content and national expressions of the legal thought, as well as ways of international circulation of ideas and theories, in other words setting a global legal thought. The Network is a new comparative approach : national vs national, international vs international, applicable law vs theory. The Network will be coordinated by Professors Gilles Lhuilier Ph.D and Marie Mercat-Bruns Ph.D. These two main Coordinators together with Coordinators linked to continents/countries/subjects will be members of an “International Network Base”. The participants will act according to standards of scientific non profit organisation (ie the equivalent of “sociÉtÈs savants”).

The first task of the international Network is to draw a map of the contemporary global legal thought, defining the various themes of discussion (i.e. practical themes such as Bio/Nanotechnologies, or clean technologies...; concepts such as Global Justice or Gender issues...); schools or trends; epistemological approaches (i.e. Critical Legal approaches, Anthropological analysis of law, thoughts on Economy and law, cognitive psychology and Law, law and literature, Sociology and law...) which open debates because of their political consequences; as well as where they come from (continents, countries, authors, institutions, publications...). The questionnaire below will be sent to all interested researchers data collected. The results of this Inquiry will be published in both English and French. The second task of the Network will be to set a framework fostering exchanges. Internet will be the best means of communication between all involved individuals (@ list). An @bulletin opened to all researchers may be created. Seminars, symposia, or collective written publications may help promote common or parallel research projects. The Network’s main languages will be English and French, without excluding any other language by principle though, without necessary translation.
PROTECTION OF CITIZENS’ RIGHTS IN THE DEVELOPMENT OF THE RULE OF LAW IN CHINA
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China has made great progress in its social and economic development and law has played a significant role in it. When China decided to embark on the road to economic reform and opening up to the outside world in the 1970s, democracy and law were seen as prerequisites for economic success. In the 1990s China finally settled on the policy of constructing a country with the rule of law. Without progress in democracy and the rule of law China’s success in economic and social development would not have been possible. However, there exists a one-sided view about how to evaluate the extent to which China is making progress in democracy and the rule of law. People often pay great attention to the top-down approach of the rule of law as initiated by the central government, focusing on the legislation and decisions made by the National People’s Congress and its Standing Committee. From this angel people can see that despite the fact China has made a lot of laws, Chinese legal system still needs more improvement. In addition, the enforcement of law is hardly satisfactory. This then led to the pessimistic view about the prospect of the rule of law in China. This view has failed to take note of the movements started from grassroots – bottom-up trends in which individuals stand up against various types of encroachment of their rights, defending their civil as well as property rights by resorting to legal and political means, thus forming a formidable force of rights defense movement that challenges, as well as compliments the top-down approach adopted by the government. Local governments have also made various adjustments to bridge the gaps between the top-down and bottom-up approaches. My paper will analyze these two approaches to the development of the rule of law in China, focusing on citizens’ rights in the dynamic process of economic development.

THE INTERPLAY OF POWER, RIGHTS AND INTERESTS: AN ECONOMIC AND LEGAL ANALYSIS OF URBAN HOUSE DEMOLITION AND RELOCATION IN CHINA
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In recent years, the problem that China’s chaqian (“Demolition and Relocation”) has emerged as a field prone to disputes. Such disputes frequently involve various governmental bodies, private developers, the courts, construction companies, and the general public. Conflicts between the private rights and the public interest, between the individual interests, commercial interests and the political power, are becoming increasingly fierce and have raised concerns about social stability. Those well-connected construction developers try to gain the huge illegal profits. Some forced eviction cases violate basic human rights, but the legal redress for evicted persons still lack. With an examination of the current law framework in China and what policy changes have been to attempt to deal with the issues associated with Demolishment and Relocation, the author use the method of law and economics and two game theory models to directly illustrate situation encountered in practice and the Regulation on the Administration of Urban House Demolishment and Relocation (by State Department, 2001). Finally, presents some possible solutions and recommendations.

PROGRESS AND PUZZLEDOM: PROFESSIONALIZATION OF LEGAL STAFF IN CHINA
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According to the Max Web’s theory, it seems necessary to realize the professionalization of legal staff when a legal system wants to become the formal and rational. Along with the modernization in society and economy in China since the 1980s the Chinese law stipulated higher and higher professional standard to access the legal profession, the Chinese legal staff including judges, prosecutors and lawyers become more and more professional, and more and more law students graduates from the law schools. To a certain extant, professionalization in China seems to show the correctness of the Weber’s theory. On the other
hand, China meets some puzzledom in the process of professionalization. First is short of the qualified legal personnel. Second is inequality in distribution of the formal legal staff in the different districts, most of them concentrated on the big cities, very few in the countryside. Third is law graduates hate to go to the poor districts, even though China had more and more law graduates for recent years, so that the inequality between the different districts will become larger but no smaller.

**JAPANESE CONSTITUTION ARTICLE 9 AND THE BACKLASH AGAINST PEACE**
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Despite the end of the Cold War, the world has experienced a reversal of the trend towards peace. This reversal is also apparent in Japan, and is visible in the succession of emergency laws, overseas deployment of the Self-Defence Force, constitutional amendments drafted by the ruling Liberal Democratic Party, national plebiscite bill and related parliamentary activities. These may be interpreted as a drift towards a more militarily inclined nation, as urged by the US administration and implied by Japan's globalising economy. There are various indications that Japan is moving towards a new militarisation not only in actuality but also in current judicial and administrative reforms. Japan's Article 9 renounces war, and whether this Article can be maintained in the face of pressures for change is a matter that does not affect Japan alone. The Article emerged from the international human desire, following the end of World War Two, to seek an end to war. Thanks to it, no foreign citizens have died through the actions of Japanese forces for over 60 years, despite the Self-Defence Force being in reality a substantial army. Were Article 9 to be abandoned, the issue of World War Two responsibility would emerge again, and its purely logistical support in the Iraq Occupation would be seen as complicity in the US-led action. A situation that is simply the absence of overt war is not necessarily peace. Peace and its philosophy need a deeper foundation. In Japan today, traditional opposition movements have waned, but in their place have appeared new groups, such as the 'Article 9 Circle'. This paper aims to deepen the theoretical foundation of Article 9 and proposes a disarmed neutrality, by dealing critically with the theory of Kant and Tsuneto Kyo, one of Japanese Neo-Kantians.

**LEGAL CULTURE RELATING TO THE TENNO (EMPEROR SYSTEM) IN JAPAN AND THE NOTION OF THE “TENNO AS A LIVING GOD” IN THE PRE-WAR ERA**
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In the later part of the nineteenth century, under the overwhelming influence of Western civilization, Japan succeeded in modernizing itself through the Meiji Revolution. One of the most important agents of modernization was the establishment of “The Constitution of the Empire of Japan” (1889). And yet, Article 1 of the Constitution stated: “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal”; furthermore, Article 3 stated: “The Emperor is sacred and inviolable”. Taken together, these Articles make clear that the “modern” Japanese Constitution incorporated an essentially pre-modern or “feudal” element, namely the concept of the divinity of the Tenno. In particular, from the 1930s onward, Tenno Hirohito came to be regarded as a sacrosanct and absolute monarch. On the 1st of January 1946 Tenno Hirohito had to issue the so-called “Declaration of the Human Being” whereby he denied his sacredness towards the world. Thus, in pre-war Japan, the idea that the Tenno should be “worshiped” as a “living God” lay at the heart of the modern constitution and constitutional law – a system imported directly from Western countries and, in particular, from Germany. In this paper I would like to discuss the traditional Japanese “polytheistic ethos” as the ideology that made possible the coexistence of the modern and pre-modern Tenno System; I would also like to examine some aspects of the Japanese legal culture relating to the Tenno system, especially the impact of the Japanese approach to religion in comparison with the Christian “monotheistic ethos”.
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Nowadays protection of the environment has become a world-wide purpose of states, especially since the UN's Earth Summit in Rio de Janeiro (Brasil) in 1992. In pursuance of this purpose, the Japanese legislature enacted the Basic Environment Act soon after the Rio Summit, following similar moves by other developed states. After the enactment of this Act, a number of legislative enactments were passed and legal reforms were initiated, designed to promote environmental protection in concrete fields. Originally most environmental legislation was concerned with the prevention of particular forms of pollution. However, in recent years the focus of such legislation has shifted to the protection of the broader natural environment through the promotion of sustainable development. As regards their scope and objectives, environmental acts are directed towards two main areas: life and nature. In this paper I would like to present some thoughts on how these two perspectives might be synthesized. When the focus of our attention is not particular acts but wider objectives, protecting the natural environment as a whole becomes more important than dealing with specific violations of anti-pollution legislation. This approach to the matter will lead us to a more comprehensive understanding of environmental law. From a legal point of view, three types of environment may be distinguished: human, natural and global environment. These types of environment largely overlap with each other, but have respectively their own essential meaning. Natural environment furnishes the link between life and nature. In this connection, reference might be made to traditional cultural heritages, whether human or natural, preserved by environmental law. However, in order to secure the preservation of the broader natural environment as a general purpose of contemporary states, it is very important to ground this linkage philosophically. It is submitted that the study of Japanese philosophy, especially the philosophy of Tetsuro Watsuji, can provide valuable insights into this matter. According to my understanding of Watsuji’s thinking, we should at first focus our attention on the task of making concrete the environments to be preserved. An environment always exists in certain space and time and has its own special features. It is from this point of view that the connection between the concepts of natural, human and global environment must be sought and explained.

DOES INDIA HAVE A LEGAL CULTURE?
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Scholars and observers of world politics are almost unanimous in their admiration of what they consider to be India’s spectacular success in nation-building among all post-colonial democracies. In more senses than one, this assessment seems fair and appropriate. After all, several experiments in democracy and nation-building in post-colonial countries in Asia, Africa and elsewhere have floundered in recent decades. Some have descended into anarchy and despotism. The success of a handful of democracies has been largely symbolic. In contrast, India, a nation of over a billion people with mind-boggling diversity, has flourished as a ‘vibrant’ democracy. Since its independence in 1947, India has conducted 14 general elections and changed governments six times. It has a stable polity, a well-entrenched, autonomous judiciary, free and lively mass media, a robust, if somewhat contentious, parliamentary system, healthy federalism and a civil society that participates vigorously in the democratic process. Evidently, very little of India’s impressive accomplishments would have been possible without its commitment to the rule of law, social justice, human rights, due process and such other socio-legal paraphernalia which constitute the bedrock of all mature democracies. India has the world’s lengthiest written constitution comprising more than 300 pages with 444 articles, 12 schedules numerous lists and more than 104 amendments. It is signatory to all the major international covenants on human rights, civil liberties, and social justice. Furthermore, India has some of the most progressive laws for the protection of minorities, women, and the marginalized. To ask, therefore, whether India has a legal culture seems absurd. Yet, in the recent decades, India has witnessed an alarming eclipse of the rule of law and social justice. The administration of justice has become sclerotic and unresponsive to the needs of the poor. In fact, sixty years after independence, over half of India’s population does not even have access to the courts for a number of reasons. The justice system is beset with corruption, endemic delays, grave procedural improprieties, caste based nepotism, and gross interference from the bureaucracy, the propertied elites, and law makers themselves. Outdated, arbitrary, and draconian laws, perfunctory enforcement, poor infrastructure, the widespread collusion of judges, lawyers, law enforcement officials, and politicians in subverting justice have all further eroded people’s faith in the state and the judiciary. The upshot has been the rise of vigilantism, extra-judicial killings, the torture of detainees and dissidents, and an egregious miscarriage of justice. In this paper,
based on a critical examination of the functioning of the justice system and the initiatives of the state, I wish to argue that India has, at best, a nominal legal culture. This is reflected not only in the attenuated judiciary and lax law enforcement but, more crucially, in the widely held perception that the law is a ‘menace’ and a ‘hurdle’ that must be circumvented. Moreover, India’s tepid legal culture has engendered serious resistance to refined ‘justice’ sensibilities such as equity, non-discrimination, fair play, and social justice. In spite of its singular success in several aspects of nation-building, the postcolonial Indian state, driven by its desire to perpetuate iniquitous, status-quoist social structures, volitionally neglected the institutionalization of an empowering, all-inclusive legal culture. I posit that this is one of the most urgent challenges of the Indian polity. It can be addressed by fortifying the legal culture through education at levels, through radical judicial reforms and by creating a level playing field for all Indians.

LAW OF ELECTRONIC VERIFICATION OF IDENTITY AND DATA PROTECTION IN INDIA
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India has realized quite early the importance of E-Commerce and the need to promulgate appropriate Legislation for its regulation. The UNCITRAL Model Law on E-Commerce was kept in view in drafting the Information Technology Act 2000 (IT ACT) that came into force from 17 October 2000. The Act focused on 1) giving Legal recognition to Digital Signatures 2) creating provision for Electronic Contracts 3) accord a Legal foundation to E-Governance. The Act is prescriptive in nature. It lays an elaborate regulatory edifice of Certifying Authority, Controller of Certifying Authorities and the Cyber Appellate Tribunal. This regulatory structure helps in bestowing certainty and finality to dispute resolution. This is a commendable feature of the IT Law of India worthy of emulation by other Countries where such laws are absent. Certain Amendments were proposed to the IT Act in 2005 keeping in view the fast changing nature of Technology. In step with several Western Countries, the Act is made Technology-neutral in giving legal recognition to Electronic Signature (Digital Signature is a specific form of the class of Electronic Signatures) Also, the formulation and validity of Electronic Contracts is now clearly defined in a new Section. There is no separate Act in India for Data protection and privacy which is perceived to be a glaring deficiency by the BPO Industry. This urgent need is addressed by revisiting some existing sections of the IT Act and providing for stringent provisions and suitable amendments for the same. A critical analysis is presented in this paper regarding such provisions and where appropriate, compared with similar provisions of the Data Protection Directive of the EU. The implementation of the Act in actual practice is made more effective by notifying an examiner of electronic evidence by the Central Government. This will help the judiciary and the adjudicating officers in handling technical issues. It is felt that the IT Act certainly needs some more urgent modifications. It is shown that the present provisions of the IT Act dealing with cyber offences and related criminal issues be dealt with a more elaborate and separate Cyber Offences Act. Stringent measures to deal with Cyber Terrorism be incorporated therein.

SOCIAL POLICIES AND THE LAW: IS THERE ROOM FOR A NORMATIVE APPROACH? (EVIDENCES FROM THE BRAZILIAN CASE)
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This paper’s broader goal is to present a description of some existing relationships between law and distributive public policies in a context of underdevelopment, inequality and poverty. Empirical evidences from the Brazilian case – the country ranks as one of the more unequal nations in the world – sustain the main assumption that there is room for a more substantive and normative (as opposed to positive or descriptive) debate on such policies and their fairness content. To do that, the paper tries to establish a dialogue with the neoclassical economic literature that usually deems wealth transfers resulting from public policies as potentially disruptive and inefficient, since they might cause incentives and price distortions that would not otherwise happen in a free-market, with no state intervention. As the argument goes, the paper states that it should be considered legitimate and defensible that in a country like Brazil social policies designed and implemented to reduce inequality are considered more fair and, thus, more desirable than social policies that do not strive to bridge the gap between poor and rich citizens. To do that, the article distinguishes progressivity (distributive justice, in legal terms) resulting from spending from progressivity that results from raising or tax collection. I both are progressive – not only the former, as economists suggest – there might me equity gains benefiting unjust countries like Brazil. In this context, the paper suggests that social policies cannot
be considered ill-conceived, poorly implemented or economically inefficient just because they result in wealth transfers on the collection side, provided that such transfers are (i) actually intended, (ii) transparent, (iii) progressive (as opposed to regressive) and (iv) in accordance with what is defined in the paper as the “minimal waste” rule – the normative assumption that scarce resources’ waste is unfair. Examples of empirical studies regarding distributive taxation and HIV/AIDS health policies in Brazil are explored in the final part of the article with the purpose of strengthening the main argument that winners and losers in public policies can be legitimately chosen and that mismanagement can lead to regressive (thus unjust) outcomes.

CONSTITUTION AND SOCIAL TRANSFORMATION (CONSTITUTIONAL AMENDMENTS IN THE POST-SUHARTO INDONESIA)

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A radical political change, either through election or coup d’etat, is usually followed by a constitutional amendment or even the creation of a new one. The paper will illustrate how the new democracy in Indonesia which started in 1998—after the authoritarian regime of Suharto from 1966 to 1998—had amended the constitution in 1999, 2000, 2001, and 2002. This is the first time that the constitution was amended ever since its adoption in 1945, with its clauses increased from 71 to 174. The amendments include the protection of human rights, the increase of press freedom and parliament, the reduction of the presidential power, and the establishment of a constitutional court. Based on the Freedom House indicator, Indonesia has become the only country in Southeast Asia that is “free” and can be considered a liberal democracy. However, the amended constitution is not transformative enough as it does not explicitly state the devolution of power in two provinces (Aceh and Papua), the civilian supremacy over the military, the independent candidates for elections, and also the inclusion and representation of majority groups such as peasants, labors, informal sectors, and women. Moreover, other fundamental societal issues such as poverty, corruption, environment, and the people’s right to information have not been incorporated in the constitution as well. This partial change is mainly caused by the approval system that is limited to the people’s council, with members of parliament and regional representatives who prioritized their interests over public interest. The creation of an independent constitutional commission and the approval of constitution by referendum may result in a more public-oriented constitution. The Indonesian experience shows that electoral democracy does not automatically develop into a transformative democracy where constitution can significantly support social transformation to achieve a more just and humane society.

BRAZILIAN’S CONSTITUTIONAL COMPLAINT: FEATURES AND PERSPECTIVES

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This study aims to establish a critical analysis of Brazilian’s Constitutional Complaint, a special lawsuit created by Constitution of 1988 and specified through Federal Law n.º 9.882/1999. There are two essential objectives with this paper: (1) on the one hand, check the most important issues presented by rules concerning the lawsuit, with particular attention to foreign influences into his creation and also verify what are the core questions related to judicial review into Supreme Court decisions; (2) on the other, puts forward a critical and innovative thesis that could helps to present a new comprehension of the national complaint into our complex judicial review framework. According to the first argument, the study intends to demonstrate that Brazilian’s Constitutional Complaint was created to provide a popular litigation, due to the possibility of sending directly a constitutional problem to the Court, as “Recurso de Amparo” and “Verfassungsbeschwerde”. Moreover, the paper attempts to conclude that Brazilian’s Constitutional Complaint provides an opportunity to protect rules and principles considered as fundamental into our analitical Constitution. Although these considerations, national constitutional complaint coexists with other lawsuits that are viewed as more useful to the constitutional protection. Thus the second argument used into the analysis intends to establish a different understanding of the lawsuit, especially through a valorization of its features and exploration of its capacities, which could increase the level of effectivity of the whole judicial review system in Brazil.
POLITICAL PARTIES AND CONSTITUTIONAL REVIEW IN BRAZIL

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Accompanying what seems to be a worldwide trend, Brazilian politics have been increasingly judicialized over the past 20 years, and the Brazilian Supreme Court has become a major actor in the political arena. Unlike the American experience, however, cultural wars are not a major issue in Brazilian judicial politics. Conversely, it is judicial interference with administrative regulations, welfare policies and economic, administrative and political reforms that seem to be on the spot. Despite the obvious concerns about democratic legitimacy that arise from this scenario, which are related to the criticism that the Brazilian Supreme Court is increasingly acting as a legislator (frequently, as a positive one), the court is also criticized for justifying their decisions on policy issues in a strictly legalistic and oversimplifying manner, thus disqualifying other important policy concerns based solely on formal, discrete and controversial interpretations of extremely broad and open textured constitutional principles. This article examines this debate in light of a recent decision rendered by the Brazilian Supreme Court, striking down a crucial portion of the 1995 Political Parties Act. The statute provided for a major restriction on the access to public funds, media space and parliamentary privileges for parties that fail to obtain a minimum number of votes in the election for the House of Representatives, distributed over at least one third of the nation’s States. This provision was considered unconstitutional for violating the equal protection clause and the principle of political pluralism. This article concludes, nonetheless, that this unanimous decision may represent a landmark of excessive activism in the Brazilian context. It suggests that the court is substituting policy preferences of the Congress by its own more often than it should, with the help of a commonsensical legal doctrine, pervasive in Brazil, which is too manipulative when dealing with constitutional principles, and too friendly to aggressive review.

THE REFORM OF THE BRAZILIAN JUDICIARY: THE PROBLEM OF ACHIEVING CITIZENSHIP AND HUMAN RIGHTS

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The present paper seeks to explore the issue of citizenship in Brazil, with emphasis on the role of the judiciary, by examining the proposed modifications to the 45th Constitutional Amendment (CA) in relation to the need to implement the so-called “new citizenship rights”. The latter are seen as legal instruments to be used in the judicial task of balancing individual and collective interests within the social dynamic that is implied in the stated Constitutional aim of promoting the good of the people, in accordance with the first part of the IV item/inciso of the third article of the Federal Constitution of 1988. The points of the 45th CA highlighted here are: a) the reasonable duration of the judicial process, b) the establishment of a Conselho Nacional de Justiça - CNJ (National Council of Justice), c) the obligation that candidates for the position of judge present proof that have been engaged as lawyers for at least 3 years, d) the binding nature of the Brazilian Supreme Court decisions, e) improving access to the legal system through itinerant courts, f) the placing of Crimes against Human Rights within the jurisdiction of the Federal Justice System, g) the creation of specialist courts for land issues, and h) the financial autonomy of the legal aid system. We also intend to present and comment on the “new citizenship rights”, particularly those related to children and adolescents, women, indigenous peoples, race, the elderly, consumers, the environment, bio-ethics and the impact of the spread of information technology. Finally, we propose to briefly consider the advantages and disadvantages of the monopolistic role of the judiciary in defending the rights of the citizens, which is typical of the process of transition from a liberal State to a social State. This monopolistic conception represents a problem, as it merely contributes towards strengthening the old idea of a systemic autonomy of the legal system and further encourages the perception in Brazilian society that the Judiciary as an institution represents the main channel through which rights can be obtained and defended. Additionally, this conception is dangerous because it undermines the role of the Legislature which is the true place for innovation, not the Judiciary.
CONSTITUTION, PRINCIPLES AND THE AGE OF INTERPRETATION IN BRAZIL
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The importance of the legal principles in judicial interpretation is expanding its importance in Brazil during last decade. This phenomenon is more visible since the new democratic constitution in 1988. Ever since the progressive ‘constitutionalization’ of many areas of both public and private law. (The enormous number of books on these issues evidences this process). This phenomenon is not limited to a mere upgrade in the formal status of these rights, but also meant the import of new method of legal analysis and patterns of interpretation broadly called Theory of Constitutional Interpretation. Again, there is a great number of titles on these issues, most of them emphasizing the new and more prominent role of the Brazilian Supreme Court. This is the reason why the new rhetoric of legal principles (and its obvious resonances in the language of morals) is quickly becoming a new kind of mainstream legal language. The extremes of this trend (a kind of principiologically revelry are calling the attention of economists, sociologists, legal theorists, due to its theoretical relevance and risks and incertitudes brought to market. This paper tries to show how these phenomena are bringing together the theoretical agenda in philosophy, legal theory, theory of interpretation and sócio-legal analysis. The recent works of Habermas and Dworkin are good examples of this effect. This situation is challenging the premises of a purely descriptive legal dogmatics, disconnected and free of any normative and prescriptive perspective (as ambitioned by the classical positivism) in the centre of the contemporary legal debate which is reciprocally fuelling and being fuelled by the philosophical debate, especially as far as philosophy of language and moral philosophies are concerned.

THE NEW INSTITUTIONAL DESIGN OF THE PROCURACY IN BRAZIL: TRANSACTION COSTS, MULTIPLICITY OF VETO PLAYERS AND INSTITUTIONAL VULNERABILITY
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This project aims to analyze the effect of the new institutional design of the public prosecutor’s office on policy making. The key moment of institutional change was in 1988 when the new constitution vested the Procuracy with great powers. The Procuracy has undergone a radical redefinition in its institutional design, with a very significant extension in its powers, which is unparalleled in the world, as far as this researcher has been able to establish (Voigt 2003). It has become a very important veto player. A polity’s ability to change or to commit to policy depends on the effective number of vetoes in political decision making (Cox and McCubbins 2000). This research aims to investigate the effects of the new incentive structure on policy-making. The institutional arrangement of Procuracy is a relevant independent variable to explain the quality of the political outcome, the governability, and considering its increasing role in combating crimes, the propensity of politicians to commit crimes. In Brazil, there are unique features in its design, the most important of which is its decentralized nature. Members of the Procuracy are granted unparalleled functional independence and they are not subordinated to the Attorney General. Each prosecutor has unrestricted freedom, only limited by the law. This design implies that each individual prosecutor is a veto player, with different purpose. It is hypothesized that the larger the number of veto players personalized in each prosecutor’s figure, the weaker the Procuracy gets institutionally, the higher the transactions costs are, policy instability. The low level of institutionalization of the Procuracy opens up the possibility of manipulation of prosecutors as instruments for the achievement of interest groups. This vulnerability affects its de facto independence. The Procuracy’s behavior will be investigated strategically in relation to other relevant political actors in the executive and legislative branches. It is hypothesized further that, paradoxically, the institutional change in 1988 produced unintended consequences and may have weakened rather than strengthened the Procuracy.

INTERPRETATION OF GOOD-FAITH IN BRAZILIAN CONTRACTS : THE LEGAL PRINCIPLES IN A RELATIONAL APPROACH
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The new Brazilian Civil Code published in 2003 replaced the old one (1917) and enlarged considerably the importance of the general clauses (and principles) in the interpretation of contracts. The principle of good faith is one of the most commonly
invoked both by Legal Doctrine and Courts decisions. Nowadays, liberal contractual formalism is being replaced by a new principiological formalism, in which general and abstract definitions about the morality of law are used as tools for legal concrete contractual analysis. This new formalism, base on a superficial and mistaken reading of authors like Alexy and Dworkin, is usually incapable to overcome the limits of a mere rhetorical application of these new concepts. This is partially linked to a naive and simplistic transplantation of international doctrines (specially doctrines on principle interpretation). This paper tries to show how the Relational Contract Theory (RTC), especially the I. Macneil’s version, best attends the methodological demands for a non purely discretionary, ad hoc and rhetorical interpretation of the principle of good faith. Furthermore, it tries to show the advantages of the contextualist approach offered by RTC compared to Law and Economics (L&E). They are linked to the fact that the relational approach doesn’t share neoclassical assumption that contractual behavior is solely guided by instrumental rationality. It acknowledges that there are multiple motivations for the contract which are not reducible to material gains and efficiency. Contractual relations are created in contexts that generate and regulate the morality contract (internal social norms) that usually are not considered by orthodox economic analysis. Finally, the paper points to the theoretical and practical advantages that derive from the criticism of some philosophical premises assumed by neoclassical contract theory, such as the concept of action, consent and intention. For this purpose it explores a distinction between actions performed for the sake of a concrete end (ex: pay less for more in a sales contract) and actions performed for the value of action itself (ex: build a healthy education relationship through long term educational services contract). It reveals how a contextualist hermeneutic technique based on a richer conceptual apparatus can grant more objectivity on contract interpretation and broadens the consideration of a moral dimension of contracts that is not defined by general and abstract moral reconstructions, but also by the internal norms (morality) of contract relations. Besides it tries to show how a contextualist method has to pay attention to domestic legal culture, values and institutions.

THE PATENT LICENSING CONUNDRUM: A BRAZILIAN SUBSTANTIAL LEGAL THEORY IN THE LAW OF CONTRACTS
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Much of the discourse theory has been used to promote the proper application of the law. Much effort has been made in order to look deeper into legal theory. However, very little legal philosophical research has been done so as to shed light on a specific field of law. Law of contract has a natural appeal for instrumental rationality, for the underpinnings of a contractual relationship are based on a consensus derived from strategical action. Is it possible to apply discourse theory to the understanding of a contract of transfer of technology? How can entrepreneurial policies be effective in the marketplace despite a basic moral argument – the dialectical relation between public and private autonomy? In this vein, the intent of this paper is to articulate public intervention in a contract without jeopardizing private autonomy. The discourse theory, as the theoretical point of departure of this work, is not a transcript either of Habermasian communicative theory or Dworkin’s argumentation theory. In fact, both of these authors are responsible for the legal theory conception which conveys a new approach on the hermeneutics of economic law, mainly the contracts of transfer of technology. The Brazilian Intellectual Property Rights Act states, firstly, that the bearer of patent rights can celebrate a contract in which is licensed the use and exploitation of the patent, and secondly, further on, that the bearer will be deprived of his (her) rights if he (she) abuses them or abuses his (her) market’s economic power. A patent is an important means of achieving economic efficiency in the market. Although it is essential for scientific development to grant privileges to inventor in order to avoid unauthorized copies, it is necessary to control this special case of monopoly. In this context, is public intervention in this contract a matter of principle or a matter of policy? Is compulsory licensing by the Brazilian government instituted against Efavirenz – used in the treatment of AIDS – a matter of policy or a matter of principle? First of all, an item will be dedicated to the study of the application of discourse theory to private autonomy. Then, limits to contractual law will be interpreted according to this theory. Thirdly, the case of patent law and its different licensing approaches is elaborated departing from this new paradigm of contractual law. Finally, a substantial legal theory can be deduced from the specific Brazilian patent conundrum.
ON CONSTRUCTIVE LEGAL SCIENCE THEN AND NOW
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The paper concerns the term “constructive legal science” and its modern use [and usefulness]. For the early adherents of the German Historical School, “constructive” denoted a certain method of handling legal data – viz. dissolving, as it were, the given legal material into concepts and principles, with the object of ultimately achieving a systematic, uniform and complete conceptual construction, independent of societal influences. In the 1940’s, the Swedish legal realist Vilhelm Lundstedt suggested a “constructive legal science” - curiously enough, one might say, since Lundstedt was a staunch member of the Uppsala school of philosophy, a movement which fiercely repudiated one of the outcomes of the Historical School, namely, conceptual jurisprudence. Lundstedt’s suggestion, however, had little to do with the juridical constructions of the Historical School – rather, “constructive” referred to the contribution of jurisprudence towards the construction of society: the constructive legal researcher had to keep in touch with empirically given realities and proceed with the purpose of benefitting society at large. “Constructive” activity, then, necessarily included evaluating elements. - As a consequence, Lundstedt’s suggestion was sternly dismissed as unscientific. Half a century later, evaluations no longer posed a problem, and the term “constructive legal science” reappeared on the scene: independently from each other, professor of jurisprudence Aleksander Peczenik and professor of civil law Anders Agell advocated a constructive jurisprudence. With Peczenik, the use of the word “constructive” had to do with the creation of over-arching [legal and moral] principles grounded in objective values; with Agell, by contrast, “constructive” referred to the opening up of traditional legal dogmatics to the inclusion of empirical material. What, exactly, is being “construed” according to Peczenik’s and Agell’s respective theories – and how? and are these constructions legitimate, democratically or normatively? Apart from wishing to rescue from oblivion the genesis of the term “constructive legal science”, I shall highlight the theoretical implications of transcending, through so-called “constructive” legal research, the limitations imposed by the method of legal dogmatics.

THE EMPIRICAL RESEARCH PROBLEM AND ITS LOW INTEGRATION IN THE LAW AGENDA: A BRAZILIAN PERSPECTIVE
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The paper focuses the institutionalization of the empirical research in law from a Brazilian perspective. The first part describes the divergences upon the empirical institutionalization problem in general terms. The scenario demonstrates that are some misunderstanding over the special features of the research in law. It is mixed with the lack of vision about the institutional and the epistemological problems. After, it describes the research methods and discusses its uses in the law studies agenda. The conclusion is that the empirical techniques are epistemologically appeasable with the traditional law research. But they are not used because of their unfamiliarity in the law researchers circles. A survey was conducted and is described in the paper. It proves that there are little sources of knowledge in the Doctoral and Master studies’ syllabus in the Rio de Janeiro State Universities. A vicious circle is formed: little is know about empirical research, so the knowledge is not forwarded to the students; in the students future classes and researches, scarce attention to the empirical methods will be given, making harder to institutionalize the empirical agenda. Some comparatives considerations area made using the United States and the United Kingdom cases. The final conclusion of the paper is that there is no dichotomy between the traditional studies and the empirical methods in law. But instead, there is a feeble interest in develop the dialogue like in the US and UK cases. In the Brazilian case, the problem can be reversed with more amounts of resources to fund works in the existing research centers.

LEGAL CERTAINTY AND INTERPRETATION
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This paper discusses the problematization of the principle of legal certainty - as addressed by Habermas in “Between Facts and Norms” – and has as its aim to analyze the applicability of these concepts to the Brazilian law and reality.
INTER-AMERICAN COURT OF HUMAN RIGHTS AS A "COURT-FORUM": PARTICIPATION OF NON-STATE ACTORS VIA AMICUS CURIAE AND PUBLIC AUDIENCES
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This paper is part of a broad research agenda on the democratic potentialities of the institutionalization of participatory proceedings through law and is also part of a specific research agenda on the legitimacy and the contributions of non-state actors at international forums. The Inter-American Court of Human Rights (IACHR) is the international forum chosen for this analysis and its participatory proceedings are public audiences and amici curiae at contentious and consultative cases. The main questions that this paper will raise are: Which is the purpose that leads non-state actors to take part in IACHR's proceedings? Are there implications of this participation on the IACHR's procedural patterns? The related hypothesis that will be developed on this paper are: (i) the non-state actors are using the potentialities of the IACHR’s participatory proceedings to influence the decision making process of the court and are reflecting on the IACHR as an efficient space for recognition of rights or more favorable interpretations of international law; moreover (ii) the participation of non-state actors on the IACHR brings a new approach to this court, making its procedural patterns similar to an international forum ("court-forum") or, according to the theoretical approach adopted on this research, resembling to a public sphere (Habermas), a space of interests justification, in which new demands are able to emerge. Therefore this paper is divided in two parts: the empirical analysis of the institutional participatory settings of IACHR and the theoretical approach, the IACHR as a public sphere.

INTERDISCIPLINARITY IN THE RESEARCH AND IN THE TEACHING OF LAW: FUNDAMENTAL CONCEPTS AND INNOVATIONS
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It is extremely important that pos-graduate and graduate courses of Law start to build up a professional that despite not being imprisoned by traditional commands of the recent past of juridical institutions he is capable to revisit this past with new forms of apprehension of these commands. It is quite clear that this process of choosing commands has to be critical and done by freed and emancipated persons that should be able to revise the researching and teaching of Law. This process of (re) building up courses and future professionals will favor teachers and students to look to the past using a dialogical and argumentative outbreak of hostilities with other forms of knowledge and traditions. This should occur in a public space of scientific, artistical and political argumentation or debate. Everyone connected to this particular object constructs this space. To understand and construct things in this way it is essential that research and learning act upon one another constantly and ceaselessly. It appears, although, that the function of the most importance of these courses proceed on the offering of the necessary conditions that may fulfill the social requirements of building up critical and competent professionals which will be able to give the best solutions to the multifarious social and scientific problems. Here we start from the assumption that in present days the great complexity of human society requires that research, teaching and learning must be innovative, in other words, this does not mean only new programmatic contents or the apprehension of the most recent data. It should be fundamentally a juridical education that promotes a critical sense and that must be able to surpass the obvious contents of the manuals and of the course’s programs, all confined to the strict area of Law. In other words, an area conceived historically as pure and self-sufficient. The solution for this problem points to reordering the behavior and the attitudes in the direction of solidarity, emancipation and of interdependence.

FROM CLASS TO FREEDOM: ROSA LUXEMBURG ON REVOLUTIONARY SPONTANEITY AND SOCIALIST DEMOCRACY
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Die Freiheit ist immer nur die Freiheit der Andersdenkenden - Rosa Luxemburg, “On the Russian Revolution” (1918). Justice is the most persistent subject in social and political philosophy. With the motto of justice, even if flawed and dreamlike in reality,
people are living together and more or less confine their own interests with reason and commonality. It was not long before the European Enlightenment in the eighteen century that social and political thinkers recognized the deficiency of the prevailing Aristotelian concept of justice. For them justice stands no longer for itself as a virtue in the private or public domain, but is conceived as the prerequisite for the existence of human beings born to be free. That is, as Rousseau and most adherents of social contract theory argued, no “just” society exists as long as people everywhere are in chains. The “civilized” humanity has become cruel, selfish, and so done injustice to the majority of people. It robs most of us of our natural freedom, because we live outside of ourselves, or more precisely, we can only live in the opinion of others. The problem of this distressing dilemma between civilization and the loss of freedom should not be treated as one of the individual’s predicament as in the liberal-individualistic thought. Rather, it is rooted in socio-economic structural conditions that capture attention of the socialist thinkers from utopianism to revolutionary socialism. Although the latter spreads into antagonistic interpretations of the socio-political and historical development of the socialist movement from the outset of the Russian revolution in 1917 to the present, such an antagonism is to be understood as disputes over strategic rather than ideological issues. Both Trotskyism and Luxemburgism, for example, allege that socialist democracy could only be brought about by way of authentic proletarian internationalism, although their differences in estimating the possibility of the self-organization of the working class are often underlined. For revolutionary socialists, the struggle for proletarian internationalism is crucial for social changes that are indispensable for transforming our society into a “just” one, with reasonable and humane conditions for one’s life and work. In this paper I will discuss this idea in the spirit of Rosa Luxemburg’s. Her famous advocacy of revolutionary spontaneity, known as “spontaneism” against any “democratic centralism”, is in my opinion the genuine revival of Marxist theory of class struggle. Since class struggle is the driving force of dialectical social changes, it cannot be replaced or intermediated by any “other” “progressive” forces. These will end by excluding self-determination as well as destroying self-consciousness (class consciousness) of working population. I will use the phrase “from class to freedom” to characterize this Luxemburgian thesis of spontaneism (revolutionary spontaneity) and try to elaborate its significance to socialist democracy. I will argue, against common understanding, that spontaneism and socialist democracy stand not in a quasi means-end relationship, that neither of them ought to be understood as the means to pursue the other. In fact, they are two independent, though reciprocal, principles for creating social relationships among free and equal persons. Furthermore, each of them is necessarily supportive of the other. With the conjunction of these two principles, it is shown how the Luxemburgian thesis remains at the heart of Marxist social theory of class.

PATRIARCHY AND POLITICS. GLC WOMEN’S COMMITTEE AND LOCAL DEMOCRACY.
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The Greater London Council (1982-1986) has probably been the most ambitious experience of local democracy that has had Europe so far. Influenced by the social movements of the seventies and leaded by the most critical left of the Labour Party, it brought alliances with the social movements to a conclusion, it gave autonomy to different groups -women, homosexual and ethnic groups- so that they could participate with freedom in the decision-making. In spite of its limited competences, we can consider the Greater London Council, one of the most relevant events of our recent political history. Inside the Greater London Council, the Women Committee was the most outstanding and the one that influenced the most in its initiatives and actions, and at the same time one of the forgotten. The real and active influence of the feminist thinking in all its actions of local government were not just related to the women context, but it made politics feminization became possible. Though it was attacked and questioned before it became abolished, the Women Committee stood out because of its democratic actions and equality.
DEcratchocratic Citizenship
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The world has changed too much. It is fragmented and its securities are not the same any more. That is the reason why we would like to reconsider citizenship and approach it from other different ways and another methodology (complex). We want to make citizenship to be the dynamic centre of those processes that consider the real world. Because of that, we must reinforce democracy. Democracy has always distinguished itself as the one that distributed power among people. Democracy is an open process, able to turn every kind of domination relationship into uses of power for citizenship (civic self-government). It is not only a way of government, but also a process in which subjectivities colonize reality by means of action in spaces. Democratic citizenship is a citizenship that allows everybody to have their place in those spaces, where everybody can interact and communicate.

The Quality of Democracy
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Researches on democracy performance have usually been unclear due to factors as: the undefined limits, the improperly justified normative framework, or the unspecified and unclear quality indicators. The fact is that we do not reach a consensus on a set of quality indicators. In this paper we propose four quality indicators considered as fruitful resources in order to establish diagnoses of the situation of democracy. 1. Proper working of the Rule of Law. This is a normative reference of an appropriate working of a representative and constitutional democracy. The point is to test the range of impunity, corruptions and organized violence measuring the working of Judicial Power and the performance of other ruler institutions according to independency, impartiality and competence criteria. 2. Constitutional efficiency and supremacy. It means to analyze the range of consistency of constitutional organization, the content of laws and political practices with the constitutional references. These are the last guarantee of rights, universal values and higher political goods of institutional system. 3. Representativeness. An adequate political representation depends on an appropriate combination of its three characters -accountability, responsiveness and inclusiveness- so as of the reflection on the institutional development. It means the good working of Political Parties, Parliament, electoral system, so as the set of resources and chances that make possible to fulfill an institutionalized and efficiency opposition. 4. Civic skills. Good democracy is not a result of "private vices". Democracy flourishing requires consistency between citizenship habits and democratic principles. These public virtues are: faithfulness to legal and constitutional framework, enlightened spirit, tolerance, solidarity, self-contention, among others. In short, worthy democracy will not exist without democrats.

Justifying Democratic Equality
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Participation, collective deliberation, and collective decision-making are not, as such, exclusively democratic institutions. The defining principles of democratic decision-making are (1) the principle of maximally inclusive participation, and (2) the principle of equal participation. The task of this paper is to subject the standard justifications of democratic decision-making into a critical scrutiny. I shall argue that the standard accounts (e.g. those of Habermas or Rawls) are not sufficient to justify principles (1) and (2). For example, the widely accepted congruence principle - the principle according to which all who are affected by a decision should have right to participate in decision-making - does not provide a sufficient justification for democratic participation. The congruence principle could equally be used to justify corporatism, that is, a system in which representation in decision-making bodies should be related to the importance of the interests represented rather than to the number of individuals sharing those interests, and the represented groups should be self-governing in those issues which concern their members only. Such a system is incompatible with the democratic principles (1) and (2), for it inevitably creates unequal participation rights. My
conclusion is that a justification of political equality characteristic of modern democratic states has to be a contextual one. It has to refer to the specific nature of the modern state and of the modern notion of citizenship. To put it simply: we do not have participation rights because we are affected by the decisions made at the state level; rather we are “affected” because we are citizens of the republic and therefore should have the participation rights. “Being affected” should be analyzed as a normative, not as a causal notion.

JUSTIFYING DEMOCRATIC PROCEDURES IN DIVERSE SOCIETIES – EPISTEMIC VERSUS EGALITARIAN APPROACH

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In this paper I will concentrate on the role of political equality in the context of democratic decision-making. The value of democratic decision-making is often connected to its tendency to make political process fair. This fairness can be interpreted either as a tendency of the procedure to produce just outcomes (so-called epistemic approach) or as a property of the procedure, that it treats decision-makers equally (so-called egalitarian approach). Theorists who maintain that democratic institutions are fair because they promote just outcomes usually hold that the outcome of political process can be evaluated according to a standard that is logically independent from these procedures (e.g. David Estlund). Other theorists (e.g. Thomas Christiano) defend democratic procedures because they are intrinsically fair, since they treat people as equals. Both of these approaches have many advantages, but both have their weaknesses too. I will argue that in contemporary societies conditioned by social and cultural diversity there is too wide a disagreement about what this kind of standard for evaluating outcome could be in order for the epistemic approach to be robust enough as the sole source of justification for political arrangements. In ideal conditions (as Habermasian ideal speech situation etc.) the agreement on the most just solution might be reachable, but practical decisionmaking situations are usually more or less indeterminate. Even theorists favoring somewhat this kind of path of justification do admit that epistemic approach can proffer only minimal justification i.e. that no other method of decision-making can be shown to be epistemically better than democracy (see e.g. Gerald F. Gaus). Thus purely epistemic approach requires some egalitarian backup. Although the epistemic approach has some evident troubles, I will illustrate that an entirely egalitarian approach has certain difficulties too. Therefore, as many would probably agree, neither of the approaches is sufficient alone but both of these elements – epistemic and egalitarian – are needed for procedural justification. However, this seems far too vague as an answer and the topical question is, how to combine these elements and on what grounds. In this paper I will seek to clarify problems involved in combining these strategies. How the epistemic and egalitarian elements should be weighted when in conflict? And what is the role of political equality in democratic procedures in a diverse society?

DELIBERATIVE DEMOCRACY, THE COUNTERMAJORITARIAN DIFFICULTY AND JUDICIAL APPOINTMENT

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The Aristotelian and republican idea that random selection is democratic and electoral selection is elitist has been drawn upon by Eisgruber and Spector in their support of judicial review based on a bill of rights. The argument is that in considering the extent to which judicial review compromises democracy, it is important to recognize the elitist features of contemporary democracies. However, recent experience with random selection, in the form of deliberative polls, throws new light on the countermajoritarian difficulty. In support of judicial review, it supports the view that citizens exercise less autonomy in voting than is suggested, say, by Jeremy Waldron. On the other hand, it points to a new source of countermajoritarian concern. Most radically, this lies in the absence of constitutional juries. More moderately, it lies in the absence of judicial appointment processes based on ideals espoused by deliberative democrats.
AESTHETIC CONSENSUS IN POLITICAL DECISION AS A PERSPECTIVE FOR LEGAL SECURITY: A DISCUSSION ABOUT DEMOCRATIC LEGITIMACY

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The discussion about legal security is often approached to, on the grounds of legal philosophy, as the equivalent to foresight and control of future decision. The present communication tries to suggest another aspect for this discussion, as well as to put it in a wider conception: it intends to ask about the possibility of passions, in the sense of an aesthetical experience, to produce agreement through artistic seduction, without meaning loss of democratic autonomy to peoples’ will. The stress on the present time that gives the lines of this kind of consensus could be justified from the Greek point of view of a sophistic consensus, worried about the kairós, and from the studies of Aristotle on rhetorical pathos as a component of agreement. The rehabilitation of rhetorical-humanistic tradition can also be taken as the political dimension of Gadamer’s philosophical hermeneutics, which refuses the aesthetical consciousness to be separated from the concrete social basis of decisions. The distinction between sensible and intellectual choice, the suspect of falsity over the not enough reflected decision of the masses, as well as the narcotic effects of kitsch art, commonly pointed out as the taste of the masses, are to be questioned in contraposition to the consideration of charisma and creativity as legitimate ways of getting social cohesion. This communication assumes a non-Weberian notion of charisma, identified in the social movement as creativity and not only as manipulation by a subjective leader. Such manipulation can, contrarily, be interpreted as a demand of a super-individualized society, rather than a consequence of the aesthetical collective preference. The issues of totalitarian decision could also be re-contextualized as being present in the execution of repeated proceedings that come a posteriori, so that the ends once legitimated through an initial agreement are taken as dogma to be reached in the future and not as a fictional project that might me reviewed whenever another, that appears to be more seducing, shows up in the occasion as inventio. To let this possibility of renewing decisions, as long as it means the fulfilling of creativity and not of violence, be seen as a guarantee to democracy seems to be a new perspective for the problem of the little engagement of citizens, particularly in countries where artistic expression could set a wider channel of communication in comparison to the specialized and excluding discussion.

THE MEGA-LEVIATHAN AND ITS DEMOCRATIC BASIS: THE JURISPRUDENTIAL SIGNIFICANCE OF HANS KELSEN FOR THE EUROPEAN UNION

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Many participants to the ongoing debate on the European Union’s democratic deficit tend to point to the absence of a European demos as the main cause of this problem. In doing so they tacitly accept the assumption that the EU is but an extended version of the national democracy, where the demos are governed by legal norms they have imposed upon themselves. The present paper argues that we must abandon this assumption, lest we cannot even take the first step to the neutralization of the aforementioned deficit. Underlying our argument is the insight that the EU is a polity fundamentally different from the nation-states of which it is composed, and that the democratic basis of this mega-leviathan, therefore, must be constructed in a way other than the way that has been done in the case of national leviathans. Drawing on a theory of democracy elaborated by Hans Kelsen during the Weimar Republic, this paper will devise a strategy through which we may be able to arrive at that alternative democratic foundation for the EU.

SHARED CITIZENSHIP, JUSTICE, AND THE PROBLEM OF GLOBAL IMPARTIALITY

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Liberalism’s commitment to moral equality for all seems to be at odds with the liberal notion of egalitarian justice confined within state borders. In response, a recent trend in political philosophy is to show that a globally impartial liberal theory is not incompatible with distinct principles of distributive equality within the national context. One move has been to seek a legitimate, impartial ground for partiality toward one’s fellow citizens; another to show that the seeming exception on the home front is not really a deviation from the global equality principle. In this paper I question the viability of the latter strategy through a critical
examination of certain versions of liberal nationalism, especially the claim that what we take to be partiality is not really partiality but a variation of the same global equality principle, minus its cosmopolitan prescription for justice. Some theorists of liberal nationalism make a distinction between absolute deprivation and relative deprivation, arguing that though the rich countries have an obligation to ameliorate absolute deprivation in the world, their obligation does not extend beyond a certain threshold level, whereas relative deprivation at home creates a more urgent obligation to respond to citizens’ basic needs on an equal basis. This point is usually based on the idea of shared citizenship and its related implications. While I am in broad sympathy with the idea of global impartiality that is compatible with differential responses to citizens’ needs and to the needs of distant people, I believe that liberal nationalism is not the best normative justification for the idea. Some version of liberal cosmopolitanism seems to be the answer. I argue that a duly modified (liberal) cosmopolitan theory of justice is the best way one can reconcile the claims of shared citizenship with the global impartiality principle. Liberals, as a matter of principle, should hold on to their liberal egalitarianism both at home and abroad. The moral demands of shared citizenship should be based only on pragmatic concerns, which means liberals should desist from giving a principled justification of distinct distributive justice in the national context.

FREEDOM OF ASSOCIATION AND "CONGRUENCE" IDEA IN CIVIL SOCIETY
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This is a paper about freedom of association. I shall discuss "congruence" idea as a freedom of association issue. Freedom of association being a fundamental right in liberal democracies is a pillar of civil society. I shall first try to make some sense of this common idea, which to be called intrinsic value of associational freedom. In this context I shall discuss some of the complications that arise in analyzing civic participation that weakens liberal democracy: "Bad" civil society. According to Rosenblum to be considered that "the moral uses of pluralism" could be a strategy against "bad" civil society critics and legally mandated congruence or government inducements. Finally such a question comes in mind: Could moral rights be used as a viable alternative to "moral uses of pluralism" strategy?

CONSERVATIVE VALUES AND GROUP AUTONOMY - A THREAT TO LIBERAL, DEMOCRATIC FREEDOM?
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Proponents of conservative or traditional values dissociate themselves from liberals who emphasize neutrality regarding people’s self-regarding values and the right to define one’s identity. To demand that choices fulfill certain inner criteria or that they should be guided by “objectively” defined cultural identity is to undermine agents’ freedom to choose in matters, which fall (and should fall) outside the domain of morality. In a democratic society, people are free to express their opinions, moral views and feelings, to discuss and debate the value of various habits, traditions and life-styles. Unfortunately, people have a tendency to reproach others, not only when their behaviour threatens others’ wellbeing but also when they feel annoyed, irritated, disgusted, morally upset or offended. Concern people’s ‘bad’ habits implicitly reflects prevailing normative, often moralistic attitudes. To say, for instance, that “lack of enthusiasm, wishy-washy goals and poor self-marketing” should be seen as examples of “bad career habits” is a statement about the value and content (goodness) of what success means. But what is this ‘non-goodness’ or ‘badness’ people see as objectionable? Does ‘not good’ mean ‘bad’? Does it imply ‘you should not do it’? Why should people refrain from doing it? Is it morally bad in the sense of ‘morally wrong’? Or is it just people find unpleasant but which does not fall in the realm of morality? Something people should tolerate? My intention is to show that although people do reproach others for their habits, interferen is not justifiable. Firstly, because bad habits should be distinguished from bad behaviour and secondly, because of the self-regarding nature of habits, the alleged badness cannot be moral badness. Habit A may be bad because of its detrimental effects on oneself but this in itself does not make it immoral anymore than the habit’s usefulness does not make it moral. Also, in our increasingly multicultural societies, undermining the value of individuals, at the expense of groups and communities, leads to clashes between cultural groups, endangers the well-being of minority members and poses a threat to democratic freedom of opinion. The shift in emphasis from individuals to cultural groups forces “group
identity” also on those individuals who shy it. Labeling individuals with group identities leads to power-play and stereotyping, to moralistic attitudes, censorship and unnecessary confrontation between values and views that might be made compatible.

HOW ABOUT A GLOBAL LEGAL ORDER?
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A global legal order is a phantom to some, an ideal to others; some claim it is emerging, others say it already exists, again others are convinced it is an illusion. All such statements are connected to a more or less hidden concept of a global legal order. Of course, there is not just one single concept of a global legal order, or, for that matter, of law itself. And of course, much also depends on the choice of a specific discipline-related perspective. I propose to take a serious look once more at Kelsen’s ideas of the existence of a legal order. Unlike the popular view, also criticized by David Kennedy 1994, that Kelsen ‘remains in the canon [of international law] only as a theoretical and historical reminder of mistakes no longer made and henceforth to be avoided’, I will defend his theory as a highly useful approach. The general conditions for the existence of a legal order are the actions of human beings, the use of legal norms for the interpretation of these actions, the normative effectivity of the order and the unifying thought of the relevant legal basic norm. There is nothing extraordinary about a global legal order that necessitates a deviation from these conditions.

THE PARADOX OF THE GLOBAL REPUBLIC
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The re-energizers of the civic republican tradition claim that their ideas remain the useful tools of contemporary political theory as well as practice. In particular, some view civic republicanism as a leading alternative to both liberalism and communitarianism. This paper focuses on the very notion of the republic as a political body that secures liberty and executes law. I shall argue that a number of limitations make the republican conception of political community unable to satisfy the stipulations of the ongoing global transition. In the republican tradition, the res publica is a strong body politic that has numerous functions. It fosters the common good, brings external security and internal political stability. It defends justice, protects liberty, and constitutes an institutional framework for self-government. Consequently, contemporary republicans develop the notion of a strong state. Philip Pettit, for instance, declares: “we are going to be relatively well-disposed towards giving the state considerable power; we are going to look more fondly on state interference, provided that such interference can be bound by constraints that make it non-arbitrary.” What concerns the nature of political governance, contemporary republicans embrace the popular models of deliberative and contestatory democracy where participation in public discourse and a possibility to contest legislative decisions constitute civic engagement. After exploring these concepts in more detail I shall conclude that most attempts to incorporate the traditional ideas of civic republicanism into contemporary political thought appear both ineffective and often essentially nonrepublican. When new republicans reshape the classical notion of the res publica into deliberative or contestatory democracy they have to abandon some key functions of the republic as a vigorous and dynamic political body. Deliberation and contestation as the forms of political participation fly in the face of the old ideals of passionate civic engagement and virtuous public service. The ideal of the global republic seems intrinsically incoherent.

THE POLITICAL REPRESENTATION OF CULTURAL IDENTITIES
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The emergence of new cultural identities based on emancipation movements demands political quota and polyethnic rights and involves some challenges for political representation. One of them is the claim to collective representation reflecting cultural identities as collective political subjects. They hold collective interests and rights and better representation of specific under-represented and marginalized groups. As long as this claim contributes to making a more representative and proportional political representation in Democracy, collective representation may reduce the deficit of legitimacy currently affecting western democracies. But some problems may emerge in the collective representation of cultural identities that could pervert the extension of political representation. The first problem is the consequence of considering collective identity as a substance. It
may obstruct further changes and the self-determination of its individual members. The second problem is related to the non-definition of the concept of culture and its hetero-determination by mass media or market. It denies, once again, a human being’s self-determination. Moreover, focusing on group cultural specificities could withhold structural inequalities. The third problem is, paradoxically, the anti-political perspective involved in cultural representation and citizenship. Making a brief introduction and analysis of these issues is the objective of this paper, whose main premises are both the primacy of political democratic sphere and an instrumental concept of groups and culture, as being useful to political inclusion and to the self-determination of marginalized individuals.

THE CONCEPT OF PLURAL SUBJECT: A SYMBOLIC MEDIATION OF SOCIAL DIFFERENCES

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My text deals with a problem deriving from the growing relevance of the postnational dimension in politics and law: juridical imputation of acts and beliefs to social entities can no longer be exclusively solved through the model of the nation-state. Indeed, the widespread cultural and institutional pluralism jeopardizes the centrality of the national sphere, it affects the ‘great divide’ between private and public law, and it obscures the status of agents in transboundary legal developments. My intention is to show, using the schema of plural subjectivity, the ways in which we can deal with the question of imputation – foundational from the legal and political point of view – without running into any category mistakes that often guide the theoretical configuration of collective individuals. Indeed, pluralism as a sociological term and subjectivity as a philosophical term delineate the plural subject as a legal-political center of imputation that is both institutional and non-institutional. Therefore, the political subject should be articulated in its capacity to accommodate differences and, thus, plurality. But in order to discover the conditions of possibility of this capacity we should take into account some historical lessons. Indeed, the history of modern phenomena of social and political integration confirms that, in order to trigger integrative processes, it is actually necessary to express the political in a symbolic way. Therefore, studying the relationship between institutions and symbolization is the fundamental aim of this paper. In a democratic context of discursive participation, it is even more difficult to accept the idea of an immediate and a-critical faith in the symbolization of the political as a source of social integration. Yet it is equally difficult to assert that one could guarantee integration simply by virtue of the rational acceptability of the normative claims advanced by institutions. That is why I want to put forward a new theory of the plural subject as a symbolic form. By symbolic form I mean a generative scheme or rule – a scheme allowing the faculty of imagination to focus on specific objects and transform them into images that yield truth claims yet to be tested. Through what it reveals we can have an idea of what it conceals. On the basis of this idea we could be able to determine the conditions of possibility of the processes of postnational integration.

MULTICULTURALISM AND GROUP MEMBERSHIP

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For the last decade or so, questions of diversity and difference have much dominated political discourses. People living within the same political community are conceived as having different backgrounds and possessing different values and beliefs. To an increasing extent, people are also seen, not only as possessing different values and beliefs, but also as being different, with different cultural, sexual, racial etc. identities. The acknowledgement of people’s differences and the virtually uncontested conception of people’s identities as prerequisites for meaningful and worthwhile lives, have led to debates about the institutional measures required for accommodating difference. Many multiculturalists have emphasized the need for specific group-differentiated rights, whereas their critics have insisted that a difference-blind approach best serves to guarantee equal rights and opportunities for those different from the majority. However, whereas the promoted political approaches vary, a relative consensus about the political relevance of different identities has emerged. Identities are taken into consideration when thinking about the ways in which individuals, groups or larger political institutions interact with one another – irrespective of the actual political measurements that spur from these considerations. In my paper, I will draw from two important remarks. Firstly, that those identities found to deserve specific consideration are primarily conceived as social or collective identities – shared by some, unshared by others. Secondly, and presumably in consequence of the first remark, that the debates about the accommodation of difference have revolved much around the questions of how to treat different groups or members of these
groups. Drawing from the two above remarks, I will bring forth the uneasy connection between collective identities and group memberships. I will use two recent attempts to account for group membership primarily in terms of recognition, those of J. Raz and K.A. Appiah. I will argue that, whereas both conceptions acknowledge the importance of recognition in the constitution of group membership, they may fail to take sufficiently into account the discrepancies in recognition, and the implications these discrepancies have for normative political theory. By developing further structural analysis of social identities, I will show the uneasy connection between the attempts to accommodate different identities and the means of doing so by recognising groups and group members. Further, I will argue for a more individuated approach to social identities in the process of accommodating differences.

THE LAPIDATION OF AMINA
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A current view on multiculturalism is that every culture has equal rights to its identity, its values and its way of life, as well as the right to its own rule. The metaethical basis to this view, if fully supported, is social subjectivism: not the central one, where a determined culture is the ruler of moral values, but the diffuse one, where justice has to be defined by each culture, independently from any other. This theory seems incompatible with the way human rights are internationally supported in many cases, such as the extirpation of young women’s clitoris or the stoning of women convicted of adultery, where central cultures try to impose their values to “evil” countries. A way out from such problem is to claim that, even if every culture has its independent rights, there is a superior moral law which prevents any culture from inflicting a human being an aberrant treatment. Such claim is similar to the traditional theory of natural law, but now it relies less upon a religious belief than on the alleged fact that (almost) everyone recognizes some basic principles, like the value of human life. The universality of principles, even about human life, is not a real fact, because several groups support different exceptions to the disapproval of killing, or have different definitions of human dignity or freedom, not to speak of economic organization or environment values. In this context, the current multiculturalism does not consist of an unrestricted and mutual respect between cultures, but of a central determination of good and evil, together with some space for tolerance for diversity. The point is that the limit of this tolerance relies on the moral point of view of the dominant culture, and depends likely on the relative power of such culture and the degree of its involvement with the affected value. Therefore, it would be useful to reflect about the purpose of the intended dialogue among cultures, the exact point of tolerance each party is willing to extend and the cultural power of each party; but, first of all, about the definition and the internal consistence of the values to be supported by one’s party and of the arguments they could be based on.

MULTICULTURALISM AND HUMAN RIGHTS
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In recent years we have witnessed a kind of revolution, a turning point in history, in the field of human rights. Despite the existence of permanent abuses as well as flagrant violations of human rights an evolution on the subject has taken place. However, although there have been many battles won and goals met concerning human rights, the war against injustice continues and the fight has not ended. It is necessary to stay alert and to avoid a potentially paralyzing self-complacency. We have come a long way, but there is still a long way to go. One of the barriers that must be overcome is the problem of multiculturalism. The theory and practice of what currently is referred to as multiculturalism developed, beginning in the 1980s, originally in the United States of America and afterwards in Europe. In this paper we work on the issue of multiculturalism and human rights. We refer in it to what is meant by multiculturalism as a contemporary phenomenon; multicultural education as the opposite of ‘ethnocentric’ education and tolerance as a key concept; the state answer to the problem of multiculturalism: neutrality or interventionism?; the value of conflicts; the clash between liberalism and communitarianism and the ‘cosmopolitan’ alternative; individual rights and collective rights and the respect for minorities; pluralism; the classification of moral temperaments; and, finally, the mass media as a manipulator of public opinion, as opposed to pluralism and respect for minorities.
SOME FUNDAMENTAL IDEAS OF THE HUMAN RIGHTS THEORY

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Up till now the discussion on what is the basis of human rights validity, or their contents, continues in philosophy and policy sciences. At the same time each and every resolution of a human rights case (generally intuitively) is based on philosophical or other non-legal arguments. This proves that theoretical insights into rational basis for human rights could be valuable in revising the human rights doctrine itself. Speaking of the rational basis for human rights validity three most significant ideas could be applied: I. The idea of freedom, as the philosophical attitude, which determines the essence of the contents of human rights. II. The idea of particular form of human freedom (right), which means some factual interaction of legal partners and which requires of interconnection on the subject of human rights with social circumstances. III. The idea of equivalent application of different philosophical attitudes, which foresees that different philosophical attitudes are equally important in disclosing the specific validity basis of human right (freedom). I. Each philosophical doctrine of human rights must inevitably presume the fundamental idea, which defines the essence of the human rights content. For example, such human rights as freedom of conscience, freedom of speech, religious liberty, contractual freedom and freedom of movement, foresee that the essence of their contents is expressed by the idea of freedom. The positive freedom in the human rights arrangement is a possibility for an individual to exist authentically (identically to his or her nature (I. Kant, G. W., F. Hegel). The negative freedom is the legal limits of human rights established by the state. (A. Berlin, R. Alexy). II. Although an individual is formally entitled to all his or her rights (principle of the human right to equality), however the extreme conditions actually emerge in life when it is obvious to an individual and surrounding people that different individuals have different rights and it is necessary for them to ensure the protection of the specific right (freedom) or several rights (freedoms). For example, when a ship is sinking, all passengers of the ship think only of their right of life. And all rescuers think only of their duty to save the sinking people. Or, when making a deal, the fact that the purchaser and the seller are entitled to their right of contractual freedom is the most important to them. The “inherent” contents of each individual human right may be established correctly if the discourse regarding the essence of this right takes place in the extreme (absolute) social situation (for example, the essence of content of social rights may be determined during impartial discourse in the situation behind the veil of uncertainty, described by J. Rawls). III. Rational basis for human rights should be disclosed by means of philosophical assumptions of the right, as a social institute, which can be explained by various philosophical doctrines of law. The theory of natural law (Th. Aquin, I. Kant, J. Finnis) should provide an explanation how human rights are related to the morality (by arguments of the reason). Ethical-hermeneutic approach of law (H. G. Gadamer, Ch. Taylor, A. MacIntyre) should rationally interrelate human rights with traditions and virtues of the community. Postivistic-procedural conception of the law (H. L. A. Hart, J. Habermas) should establish a procedure, i.e. the possibilities for the participants of the discourse to participate in the discourse in search for a consensus regarding validity and contents of human rights. A specific example. The contents of the right of life and health may be disclosed by taking into account the extreme (absolute) situation, when, for example, one individual is in a comatose state and commands the right of demand, and other individuals decide on their duties in respect of him or her. There are a lot of real life situations, which foresee analogous or similar asymmetric relation of rights. In the similar situations the successful discourse concerning validity basis and contents of the right to life is determined by the following conditions: a) Participants of the discourse consider the idea of human life a fundamental value – the argument of natural law; b) Participants of the discourse attribute their moral qualities to humanistic tradition (a specific natural individual is considered the supreme value) and relate their person with the virtue of “beneficence” (naturally value physical existence of a human being) – the argument of ethical-hermeneutic conception of law; c) Participants of the discourse believe, that an individual in a comatose state is also the participant of the discourse and has an exclusive right to demand (to be an objective) and persons surrounding him or her are the participants of the discourse, who have to respond to the requirements (they are means) – the argument of positivistic-procedural conception of law. By accepting the abovementioned conditions it is true to maintain that a human being in a comatose state has the right to the treatment which ensures the support of the human life. The similar conditions in the extreme natural situation also model a discourse when dealing with the issue of embryo utilization in science researches and the problems of pregnancy interruption, euthanasia, cloning and other problems of the right of health.
GIORGIO AGAMBEN AND THE CRITIQUE OF HUMAN RIGHTS
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The intensification of the campaign for human rights, their expansion, extension and rapid development, have been accompanied by a critique, partly sociological and empirical, but also theoretical and philosophical. The turn to questions of political and legal philosophy in the work of Giorgio Agamben, most recently in Homo Sacer and The State of Exception, adds another dimension to the critique of human rights. This paper seeks to elucidate, situate and evaluate Agamben's critique of human rights.

CAN HUMAN RIGHTS BE DECONSTRUCTED?
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From 1972 on, a certain shift seems to occur in the writings of Jacques Derrida. This turn is marked by a more pronounced emphasis on the question of ethical responsibility and political matters. In Force of Law (1992, p. 14), Derrida explains that “the structure I am describing here is a structure in which law is essentially deconstructible, whether because it is founded, constructed on interpretable and transformable textual strata, or because its ultimate foundation is by definition unfounded”. In the same text he associates justice with that which is infinite, incalculable, rebellious to rule and foreign to symmetry (p. 22). Justice is, in other words, undecidability, impossibility. On the other hand, Derrida emphasizes that the reaffirmation of the principles of human rights must be and can only be unconditional (The Other Heading, p. 52). For Derrida, the idea of unconditional is associated with the infinitude of the trace, that is to say, with difference. The aporia is settled in the following terms: how can the principles of human rights be unconditional if every concrete right is deconstructible, namely, is neither just nor unjust? According to this, are human rights equally deconstructible —in which case no one could predicate neither their universality nor their soundness, or, on the contrary, they should be assimilated to justice, and through it to infinity, undecidability, etc? If the answer to this question is that human rights are not supposed to be deconstructed, then the conclusion should be that Derrida states a new form of foundation to them. But, if so, could this gesture be considered as a return to metaphysics?

SOCIAL RIGHTS: SOME PROBLEMS OF THE NEW APPROACHES
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Several books and articles written in recent years by legal scholars provide an optimistic defense of the so called social or welfare rights. These views are based on the idea that, as rights, they have no important differences from civil or political rights; that their moral justification as human rights comes from the same values or principles that justify these other rights (autonomy, liberty, equality). Moreover, they argue that traditional classifications of rights (e.g. civil, political, and social; first generation, second generation, and so on) are arbitrary and do not show the relevant features of rights in general, that these classifications predispose us to think that there are differences (or similarities) where there aren’t any, or tend to magnify the differences that do exist between them. Although I share most of these views, I am skeptic about some conclusions that these new approaches arrive at. My main contention is that affirming that the legal guarantee of these rights is possible, and convenient, through the “justiciability” of social rights, that is, through the participation of judiciary to solve (individual or group) social rights claims, should be taken with caution. My critique is not based on the rejection of this possibility, but rather, it is grounded on a broad examination of the problem of the guarantee of social rights. I offer a panorama of the limits of the argument that sustains the viewpoint in question, and I identify some problems ignored by the new approaches related with the justiciability of social rights.
"HEALTH" AS A POLITICAL CONCEPT: RAWLS AND DANIELS ON PRIMARY GOODS

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Primary goods, in John Rawls’s theory of justice, are goods that must be secured for every citizen as a free and equal member of society. The list of primary goods should not be worked out on the basis of any comprehensive moral doctrine, because their role is confined to the political ("Justice as Fairness" §17). This theory has since come under criticism by the capabilities approach (especially with Amartya Sen), and in response to this criticism Norman Daniels has suggested making “health” primary good. Indeed, the reason for having a health-care system is to make sure that each citizen's biological base is preserved or restored to its “normal functioning,” and this amounts to guaranteeing equal opportunities for every citizen as free and equal members of society (as Rawls subsequently acknowledged in "Justice as Fairness" §51.5, 51.6, 51.7). The thrust of Daniel's reasoning is that health care—owing precisely to its role in maintaining a normal range of functions, and hence of opportunities—should be considered a higher-order interest. Daniels has to state a concept of “health” consistent with its political role. He does this by appealing Christopher Boorse's biostatistical model, extracting from it a concept of health as "the absence of diseases that are deviations from the natural functional organization of a typical member of a species" (N. Daniels, "Health-Care Needs and Distributive Justice," Philosophy and Public Affairs, 10, 2, p. 155). This concept has become the subject of controversy, so we must ask if we are justified in making health a primary good, even though the underlying concept and model is open to question. So, too, if we do consider health a primary good, it will have to be secured by the ‘basic structure’ of society, and so will not be a good that citizens in a liberal society should be allowed to trade off with other goods. This suggests that citizens are not entirely free to make decisions about their own health.

CONCEPTUAL HISTORY AND LEGAL REASONING: ANALYZING THE CONCEPT OF SUBJECTIVE RIGHT

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One of the most important legal concepts in modernity is subjective right. Not by chance, subjective right shows the argument of appropriateness as a criterion of credibility. So, has subjective rights the ones whose social pretensions was framed by previously and institutionalized legal texts. As a powerful instrument to confirms the scientific pretensions for law and to justifies de political power, the concept of subjective right will be analyzed by Reinhart Koselleck’s Conceptual History to comprehend it’s conceptual basis and the possibility to use references from Historical Theory and apply it to legal concepts. With the references of Conceptual History, it’s possible to say that the concept of subjective right was connected to patrimonial sources of juridical relationship and the necessity to show an horizon of expectations that wants to materialize the liberal models in justification of power. Curiously, the critics of liberal model in Ninetieth Century replaced the concept of subjective right to build new fundamental and social rights, changing the structure of liberal State to subjective rights as future. Both sides at the same side: using the concept of subjective right. In a political point of view, subjective right uses sources of liberal , it is also useful to consolidate a new way to talk about future. Neither a future as apocolypse (that’s the end of future) nor a future as eschatological previsions, but an uncertain future, as Koselleck said, for whom juridical and political instruments exists to control the multiple possibilities of future. Did the future whished in the past by the mentors of subjective right in Nineties was concretized? Are legal concepts made for watch and project an uncertain future controlled by past? A theory of subjective right is able to discuss about time and historical time in law? Is this a “future past”? That’s the questions that will be faced to apply the Conceptual History method to the concept of subjective right.

HUMANITARIAN INTERVENTION AND MEDICAL EMERGENCY

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We live in a world of sovereign states. According to international law and norms, each state has the right to manage its own internal affairs and has a duty to respect the similar right of other states. While international organizations and treaties have made in-roads on sovereignty, this is still our basic planetary model. With regard to war, this model rules out aggressive war. The only just war is defensive war against aggression, which may be justly waged both by a victimized country and by countries which come to its aid. In recent years, many have thought that international law needs to make room for military intervention to
stop massacres and genocide. Suppose a government initiates the massacre of a group under its jurisdiction or stands aside while this occurs. It is arguable that a state which fails to protect its citizens in this way should be seen as having sacrificed its full sovereignty, thereby allowing other nations to use military force to rescue the victims and stop the carnage. This is Humanitarian Intervention. Humanitarian intervention raises very difficult issues. War always kills innocent civilians. Humanitarian intervention could make matters worse. For these and other reasons humanitarian intervention is currently subject to furious debate, a debate which is not merely academic, as the failure of the international community to intervene in Darfur reveals. In this paper I will explore the question of whether humanitarian intervention might ever be justified on grounds of a medical emergency. Suppose a country is undergoing a serious epidemic, with many fatalities, and the government is doing nothing to stop it. There are two cases. In one case, the problem may be purely internal. The disease may be unlikely to affect other countries or regions. A particular application of this case will be an epidemic running rampant among a disfavored group, while the favored group receives preventive medication. Here we have something that like genocide by medical epidemic. In a second case, the disease may be contagious such that if not stopped, it is likely to spread to other countries, but the government does nothing about it. Such a case could occur with SARS or Avian Flu. In such a case intervention would not be purely humanitarian, but would be partly defensive. I will explore the extent to which military intervention can be justified in cases like these. So far as I am aware there has been little discussion, but the cases imagined here are not unrealistic. I will canvas the best arguments for and against humanitarian intervention in cases of massacre and genocide. Assuming military intervention is justified in some cases of massacre and genocide, I will then consider the extent to which failures by indifferent or discriminatory governments to treat fatal medical epidemics can justify the same intervention.

STATE SOVEREIGNTY & HUMANITARIAN INTERVENTION: ANALYSING THE PLURALIST - SOLIDARIST DEBATE & CHALLENGES OF GLOBALISATION

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There is so much import attached to the state’s right to sovereignty which by implication means that it is required of all states to acknowledge this right and accord respect to it. It is noted in this paper that this right is confronted with challenges that make its sacrosanctity nearly implausible. The changes that were brought into the worlds political system by the globalization phenomenon polarized interests in many ways that humanitarian intervention remains one particular political action that is unavoidable. The pluralist – solidarist debate on this position is the major construct of this paper. The pluralist acknowledges the state’s right to sovereignty as sacrosanct by the insistence that ‘Sovereignty is the only protection that weak states have against the strong and that interventionism is illegal and illegitimate…’ To this end, the pluralist argues; inter-national society is a practical association based on mutual recognition that allows states to pursue their diverse interests. On the other hand the solidarist is of the view that various nations in their solidarity reach agreement about some moral standards and that those nations have moral responsibility to uphold those standards in order to allow mutual growth. Hence, state’s right to sovereignty is not an excuse that human rights violators can give. The right to sovereignty which states have is not sacrosanct. The input of this paper to the debate acknowledges the challenges of state’s right to sovereignty and that globalization is an area of interest to the debate particularly from three dimensions; namely first, national boundaries are porous on account of new interests brought about by globalization; second, solidarism is overriding to individualism in a globalised world and third, human interests become compacted more than ever before implying the hegemony of solidarism and its triumph. In the face of changing trends in which there is extraordinary oppression; human suffering that are in the increase so state’s right to sovereignty is not absolute but that this right calls for responsibility and duty to maintain political stability. Therefore, political stability and of instability remain the core for argument in this debate. Since globalization pursues the principle of homogeneity – within – heterogeneity, then the world is becoming a global village in which larger collective interest coupled with the lack of good governance jointly make state’s right to sovereignty violable. Hence, the central significance of state’s right to sovereignty is inviolable only when state’s are at peace within and among themselves.
THE GOLDEN RULE AS ONE BASIS OF GLOBALIZATION

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In the past we lived on one earth, but in many different worlds. Today we live in one world and deeply influence one another, but in many important aspects we were independent from one another. At the same time we entered the one modern world from many different traditions. We still have ideas which are greatly at odds with one another about matters as important as the political organizations of our national states, the universality of human rights, the relations between women and men, the freedom of minorities. Those differences are not only between cultures. We therefore take the view that a study of legal basis in the wake of globalization and emergence of blocs is of great significance. The reciprocity is a fundamental principle found in virtually all major religions and cultures. It is arguably the most essential basis for many positive Laws and the modern concept of human rights. The golden rule is base on the ground of reciprocity and is a moral basic form of mankind (humanity), and endorsed by different cultures and all the great world religions. With knowledge, imagination, and the golden rule, we can progress far in our moral thinking. The golden rule is best seen as a consistency principle. The golden rule doesn't tell us what specific act to do. It doesn't replace regular moral norms. It isn't an infallible guide on which actions are right or wrong; it doesn't give all the answers. It only prescribes consistency - that we not have our actions (toward another) be out of harmony with our desires (toward a reversed situation action). It is important to note that because the principle is grounded in the generic features of action, it has a certain kind of material necessity. It will be recalled that some of the justificatory arguments for rights examined above failed because they did not satisfy the condition that they be acceptable to all rational persons as a matter of rational necessity.

GLOBALIZATION AND BENEFICIAL EXPLOITATION

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This paper's broad focus is on the relevance of the concept of exploitation for current debates concerning globalization and global justice. Its more narrow focus is on the coherence, applicability and significance of the notion of beneficial exploitation for those current debates. It is argued that beneficial exploitation is a conceptually sound notion, that it is applicable to the conditions of global labor in a number of contemporary settings, that it is an important form of injustice to be considered alongside coercive and harmful forms of exploitation, and that it should be part of the repertoire of critical concepts available for theories of global justice and politics.

CAPABILITY AND GLOBAL JUSTICE: DEVELOPMENT OR DISTRIBUTION?

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In the last few decades we have become more aware of the fact that we need global justice. There are many issues on the agenda of global justice, ranging from military interventions to environmental protection. Nonetheless, contemporary liberal theories, namely those that inherit the traits of Rawlsian liberalism, pay special attention to the well-being of economically least favored people, regarding them as poor and the eradication of poverty as the most urgent problem. Among those theorists are Amartya Sen and Thomas Pogge who are similarly concerned with the realization of global justice but are divertingly dissimilar when it comes to the means to it. While Sen promotes development (or human development to be more precise), i.e., the expansion of individual real freedoms or capabilities through the preparation of sound conditions, Pogge, a well-known critic of the capability approach, demands distribution of resources based on his theory of human rights. This paper argues that Pogge’s distributive approach seems more successful than Sen’s developmental approach when sustainability of global justice is taken into consideration. This is because underneath Sen’s idea of development one can find encouragement for infinite economic growth. Since the capacity of the earth is limited as a sink of polluted things and as a provider of natural resources, the increasing share of the poor, which will be brought by the poverty reduction, must be balanced. Global justice requires distribution for this reason. Nevertheless, the remaining question is ‘distribution of what?’. Clearly national governments as well as an ideal global government cannot take bits of one’s capabilities and hand them to others. The capability theorists including Sen in fact argue for unequal distribution of resources for the sake of capability equality at least abstractly. Having said that,
however, in order to embrace the vast variety of lifestyles on the globe, we should think of peoples’ well-being in terms of capability instead of resources. Although the language of capability seems indispensable for our sensible conceptualization of global justice, whether this leads to the support for Martha Nussbaum’s advocacy of equality of central human capabilities as a criterion of global justice is not yet answered.

DOMESTIC EGALITARIANISM VS. GLOBAL EGALITARIANISM?
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One of the crucial questions in global justice regards the point of equality. Theorists of domestic justice state that the only appropriate domain for equality is political community, but, at the same time, they support (paradoxically) the universalization of rights within the borders. The question is “why not beyond the borders?”. Theorists of global justice support principles of equality for the world domain mainly with derivative reasons, for instance, consequences of inequalities. The second position could be preferred if understood as a condition of priority in which domestic and global requests are balanced. Firstly, because the reasons for equality are very near in domestic and global domains. Secondly, because also the question “what equality” could be answered in a similar way.

CLASSICS AND NEOCONSERVATIVES PHILOSOPHERS IN THE NEW CONFIGURATIONS OF THE WORLD
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The image of the contemporary world underwent a great change after the attacks of the 11 of September of 2001 in New York. This event, which shocked to the entire world, marked the beginning of a new stage in the international relations. The reaction of the U.S.A. against the terrorism it has triggered a series of preventive interventions in different zones from the planet, causing a reaction of distrust on the part of many countries, enclosed allies of the U.S.A. During last sixty years the work of Thucydides, History of the Peloponnesian War, has been object of analysis and inspiration for many authors who tried, and try at the present time, to explain the paper and locus of the U.S.A. in the world-wide context. In many of these interpretations and analysis it appears as defender of the democratic principles of the freedom and the human rights and justifies the preventive war, being based on the necessity to guarantee the national and international security and to expand the democracy to everybody. At the present time and under the extended shade of the 11/9, making use of an inflamed rhetoric of references to the dangers that threaten the western civilization, we have seen take part to the North American troops in Afghanistan to overthrow to the Talibán regime. From autumn of 2002 to the intervention in Iraq, the press became echo of the references of the Administration Bush, more and more insistent, on the imminent necessity to end the “axis of the evil” formed by Iraq, Iran and North Korea. But at that time the priority was Iraq that supposedly had arms of massive destruction and was the country of welcome of the terrorist network to Al Qaeda.: “the terrorists of Al Qaeda who managed to escape from Afghanistan, have taken refuge in Iraq”. Two premises that finally have being false. Starting off of the historical frame that offers to us History of Thucydides, the first part of this work is going away to see the importance of the text of Tucidides for the political theory of the last years. Later we will analyze briefly the North America trajectory and the speech that has been making from different instances, academic and governmental after the 11/9, trying to decipher the contradictions that occur between the project of empire and the principle of freedom. Essays and speeches that have favored the appearance of a world in which neoconservatives like Richard Perle and David Frum, among others, impel imperial practices with the purpose of fulfilling the promise to end the “axis of the evil”. Thirdly we will analyze the analogies that exist between some speeches of Bush and the Funeral Oration and the Final Speech of Pericles. Finally, we will display some of the lessons that we can remove from the narration of Thucydides to understand better the consequences than an imperial policy could have in the configuration of the present and future world.
LAW AS A PERSPECTIVAL AUTHORITY CONCEPT

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In this paper, I will argue for the existence of something I call “perspectival authority concepts” and that law is such a concept. Here, a perspectival concept is a concept that admits of, and even provides for, multiple commonly held conceptions that are each associated with a role or perspective countenanced in the conceptual framework. For example, the concept of law includes the perspectives of citizens and officials (with perhaps even more fine-grained distinctions within), each of which has a characteristic conception (or cluster of conceptions) of law. These multiple conceptions can be inconsistent but are not necessarily in competition with each other as theories of the concept itself. To complicate this picture, some of the perspectives will defer to others as a matter of their conceptual roles, while still remaining inconsistent with the perspectives to which they defer. This explains how it is conceptually possible for the citizen to say ‘whatever the official says is law is thereby made legally valid,’ while the official says ‘I discover legal validity as already present in the law.’ The notion of law as a perspectival authority concept explains how these logically inconsistent statements can both be accurate assertions under the concept of law itself. I will also show that some (although not all) of the dispute between H.L.A. Hart and Ronald Dworkin over the concept of law can be explained by a failure to recognize the law as such a perspectival concept. Recognition of law as a perspectival concept will harmonize some elements of their respective theories, especially those that analyze law from a participant’s perspective (in Hart’s theory), and from a practitioner’s perspective (in Dworkin’s).

DO WE STILL NEED THE CONCEPT OF LAW?

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During all existence of philosophical thinking it was connected with law. Performance of any philosophical problem proposed defines law’s position. Not just a certain «theoretical» position towards law, as to another social phenomenon, such as state, politics, society – but a position, that makes possible searching any sense in the world. Sense is possible only in accordance with certain order. Any order is possible only on the grounds of law. That is why each great philosopher – such as Plato, Aristotle, Hobbs, Kant, Hegel etc. put a law in their philosophical system. Then, law is obligatory condition of intelligible world. We cannot think of any sensible world, if we are not already in such world. This is circle. Not logical circle, but ontological, hermeneutic circle. Law is not just a logical assumption, but ontological condition of existence of any sense in the world. Thus, working out of the fundamental law’s question is not just a special problem of lawyers – but a research of the condition of possibility of any possible sense. But this way of thinking requires a change in comprehension of law – de-construction of its concept as such. In accordance with my position, concept as such is not an adequate way of Zugang (access) to law, because: 1) Law is not an element in the picture of the world, like moral, religion, etc. Law is a condition of any Weltanschauung. But when classical philosophy had been trying to reach the essence of the Universe and to express it in concept, law cannot be a part of this universal picture, and therefore, of that universal concept, which includes each possible concept, because it is a necessary premise of building such concept. Ontological, not logical premise. 2) Picture or concept of the world is not the same that is world as such. And if we will consider the whole world (and law as part of it) as a concept, we can’t see that law, which is condition of any sense and, as consequence, any concept. Law’s existence is always something more fundamentally, than being of a concept. That is why we have try to find another way in order to reach the law as such.

SUBSIDIARY AND SOVEREIGNTY

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Subsidiarity and sovereignty usually seem to be in opposition, even in contradiction to each other. Subsidiarity is characterized by a plurality of legal, social and political levels and viewpoints, whereas sovereignty is based on the presumption that only one level, i.e. the state, is necessarily the highest hierarchical system of decision-making. My main thesis is that subsidiarity in a
comprehensive sense (that is subsidiarity at each level of political and legal organization) and sovereignty understood in a plural and flexible way can and should be related to each other. It will be argued that in a complex world of subnational, national, supranational and international actors, and especially in the European Union, the traditional conception of sovereignty has to be modified. It is no doubt that sovereignty is an important attribute of modern political systems. Nevertheless, taking into consideration the rapid increase of transnational exchanges and economic and cultural cooperation, it can no longer exclusively be focused on the state nor can it be conceived as the final point of reference. Sovereignty in this sense applies to all levels of political organization, that means to the state including its provincial and local subdivisions as well as to regional and even global structures represented by the European Union on the one hand and the United Nations on the other hand. Finally, this view aims at a federal framework capable of combining subsidiarity and sovereignty at different levels. Historically, this conception is opposed to the theory of sovereignty as developed in the tradition of Jean Bodin and Thomas Hobbes. It can rather be founded in the political and legal theory of the German political and legal theorist Johannes Althusius who in contrast to Bodin saw the state not as a result of hierarchical power and rule concentration but as a dynamic and opposite process of consensual and social institutionalizing with the formation of smaller communities, only in this way being able to move to the larger union of the whole commonwealth. This conception of an associational or consociational and federal commonwealth may also be useful for present discussions of legal and political theory in a modern modified sense as well as in post-modern understanding. Cf. BLICKLE/HÜGLIN, WYDUCKEL (EDS.), Subsidiarität als rechtliches und politisches Ordnungsprinzip in Kirche, Staat und Gesellschaft, RECHTSTHEORIE, Special issue No. 20, 2002, Berlin: Duncker & Humblot.

NORMATIVIST REDUCTIONISM OR NORMATIVIST ENTRAINMENT
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Our thesis is as follows: why jurists today are unable to understand law widely and in a complex way, to understand that law does not only consist of a rule. Seemingly, for jurists today, and in general for most of the informed people, the idea of rule is so deep-seated that it seems to be not only an elemental category, but it becomes almost natural and immovable in such a way that it is nearly impossible to separate law from the idea of rule. But, has it always been like this? Is not the rule a categorization or a very recent conceptual construction in the development of history? If it has really been a conceptual construction, why cannot jurists overcome it today? For this reason, in this abstract we propose, as a first solution, to identify and find the origin of this “epistemological” attitude, that turns the idea of “rule” into something absolute and limits the action of jurists when they imagine and make law. This is not really simple criticism to formalism, that rejects ethical legalism (justice, morality, ...), but rather a questioning of one of the abstractions that make the jurist abstract, and that have led to naturalize Law, that is, to take it out of context or to keep it away from people’s everyday life. We refer, of course, to the RULE, as a fundamental category of Law, and to the reduction of Law to rule with the words “normativist formalism” or “normativism”, a kind of finalist formalism. Through normativism, we see how we approach the rule as an essential category of Juridical Science, which was not only a requirement and an internal advance of it, but it falls within a historical context where the middle class demands and the capitalist plan meet an increasingly influential scienticism. Thus, considering the rule as an essential structure and category of juridical thinking, 1. We come to abridge and summarize the variety of topics and classical institutions (obligation, faculties ...) in a harmonic and beautiful way. All concepts and institutions are expressed through the rule. 2. Afterwards, they are set in a sequential order to pick up regularities and make prediction possible. Law reproduces through the rule. 3. Then, because of a kind of significant illusion, juridical science will take the rule as its sole aim. We consider that here those epistemological obstacles that we pursue are mixed: reductionism and absolutization, which are the other side of the progress of decontextualization and naturalization. The normativist jurist 1.- uses the intellectual process that makes concepts transcendental, placing the rule before everything, even doing without the certain “specific reality” and having such concepts as his sole aim. 2.- Besides, he thinks that concept and reality go together. The Rule is no longer the only purpose of his work (of his own intellectual process), but for him the rule is reality, what he calls substantialism. 3.- Lastly, after elevating the importance of the rule and identify it with the reality to which that rule is devoted, as a part of scientist and positivist legacy, the normativist jurist ends up by reducing the complexity of real things. Let us conclude by saying that, in this abstract, we only try to review the process that leads to take the juridical categories (for example, “rule”) through a historical requirement that contextualizes the juridical reason once again.
THE DISTINCTION AND TRANSFORMATION OF VALUES AND NORMS: RECONSIDERING THE HABERMAS-ALEXY DEBATE FROM THE PERSPECTIVE OF RULE-UTILITARIANISM

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One of the central issues of Habermas-Alexy debate is the distinction between values and norms. According to Alexy, the collision of constitutional principles can be solved thorough the balancing of conflicted values behind those principles. But for Habermas, Alexy’s concept of balancing is wrong, because this idea confuses the distinction between values and norms. According to Habermas, values are axiological, but norms are deontological. They are quite different and should not be confused. Form the perspective of rule-utilitarianism, Habermas’s view is right. Theoretically speaking, rule utilitarianism requests that the justification of norms can and should be based on the account of values. If we make use of Peczenik’s concept of “transformation,” it concerns with the transformation of values to norms. The application of norm, however, should not take values into account. All we have to do is just “strictly” to apply these norms. If the application of norms encounters the conflict of the norms, we should try to find the best interpretation of related valid norms and try to apply only one norm, even the consequence could be very awful. In the practice of law, however, maybe we cannot entirely exclude the consideration of values in the application of norms, especially in those so-called hard cases. Although the distinction between values and norms are theoretically clear, the consideration of conflicted values and the consideration of consequence of application might be inevitable. Without considering of values and consequence, it is hard to find the best solution solely by the interpretation of norms.

ARGUING WITH VAGUE PRINCIPLES

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This paper encompasses the analysis of a particular consequence of the process of constitutionalization: the recurrent use of vague constitutional principles for founding judicial decisions, however unnecessary they prove to be in the outcome of the case. It has been taken to be the case that the normative force of constitutional norms has performed a fundamental role in the redemocratization process in diverse countries. Notwithstanding this recurrent characterization, one cannot assure that these norms have always produced only positive results. A prolix constitutional text, full of vague terms, combined with the doctrinal assertion – a correct one, incidentally – of the possibility of direct application of constitutional norms for solving concrete cases, especially its principles, has occasionally been used to justify dangerous decisions in a democratic constitutional state. Wearing the garments of the politically correct or of justice in concrete cases, the most important principles of the legal system are frequently used to justify options founded exclusively on personal theories or private conception of the good. In this sense, the central theories of this paper are: (i) the application of vague constitutional principles requires complex argumentation (justification based on coherence maintained by the decision with the legal system) and, for this reason and other pragmatic ones, (ii) judges must avoid applying them, except when referring to their authority is necessary for an adequate solution to the case.

JUSTIFICATION AND GAPINESS LIMIT THE LAW’S CLAIM TO EXCLUDE REASONS

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Many theorists have claimed that it is in the nature of legal authority to claim for itself a general obligation to obey the law that is content-independent, universal, and categorical. Among other things, this would mean that the law is telling us to replace our own reasons for action with the reason that an action should be done or refrained from simply because it is the law. Putting aside the question of whether anyone ever actually accepts this claim, I will argue that the law does not even make this claim, if it is interpreted to be preempting all our personal reasons for action. (Admittedly, many theorists who adopt the exclusionary reasons understanding of legal authority do not see the law to claim preemption of all personal reasons.) The basis for my argument is that the law commonly cognizes individual reasons for action as a defense to situations where one does not comply with the law. The fact that the law itself accommodates individuals’ reasons for action means that the law is not telling us that we must always comply with the law simply because it is the law. Furthermore, even if the law is not interpreted to claim
exclusion of all personal reasons, but rather only some, a belief that the law has gaps implies an even greater limitation on the reasons the law can claim to exclude. To say that the law has gaps is to imply that it has a circumscribed domain to which it speaks. If this is the case, then the reasons it gives are internal to its domain. Hence those reasons are not offered against other reasons that stem from external considerations. So a legal theory that entails that the law has gaps must admit that the law cannot claim to exclude any reasons not already within the ambit of the law.

REPRESENTATIONAL AUTHORITY AND THE CHARACTER OF LEGAL AUTHORITY

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The paper is an exercise in conceptual legal theory. By presenting it, I seek to contribute to the clarification of one of the key conceptual features of law: its distinctive normativity. I follow a standard way of accounting for the distinctive normativity of law: I assume that the law creates authority relations (or, at least, it makes authority claims over its subject), and the conceptual clarification of law should heavily rely on a theory of authority. I argue that Raz’s theory of authority is a sound basis for clarifying the conceptual character of legal authority. That conviction implies (1) attributing to law claims of practical (as opposed to theoretical) authority, (2) assuming the decisional model of authority, and (3) insisting that authority relations are always relations of rational human beings: they always have a ‘personal’ element. In the paper I concentrate on the third point, and try to meet the challenge put up by the argument that we should give up the ‘personification’ of legal authority. Exercising legal authority is rarely based on some close, direct personal relationship between officials and citizens. Legal authority is often exercised by people who have no substantial personal knowledge of those subjected to their authoritative competence. If we are to attribute authority to the law, it must be somehow impersonal. I subscribe to the view that we have a strong conceptual reason for insisting that legal authority must have a personal element. The (relative) ‘content-independence’ of legal directives presupposes a sort of personification of legal authority: one can hardly attribute content-independent normative force to impersonal mechanisms (Raz). I explore the possibility of reconciling the conflicting considerations by distinguishing a strong and a weak sense of the personification of authority, and arguing that legal authority is personal only in a relatively weak sense. The conceptual point I make is based on the idea that legal officials do not stand for themselves in the authority relation: they are ‘representatives’ — their authority is ‘representational authority’. Their decisions should be seen as views of persons on how others should behave but the normativity of those decisions stems from the officials’ institutional role as opposed to their personal qualities. I argue that understanding legal authority as representational authority bears heavily on matters of legal interpretation, and leads to issues that connect conceptual legal theory to substantive political philosophy (like the issue of sovereignty).

RULES, PRINCIPLES AND THE PROCESS OF VALUATION

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Valuation represents a process of attaching of a positive or negative value judgement to a particular person or phenomenon. At the same time valuation represent includes mutual measuring within categories of “positive”, “negative” and “indifferent”. Under the conception of R. Dworkin or R. Alexy principles constitute legal norms reason of application and obedience of which results from their contend or more precisely from the result they are presupposed to cause. On the other hand, rules represent legal norms applied with no regard to results their application would cause. O. Weinberger distinguished between egoistical and altruistic motivation of behavior. The source of altruistic motivation consist in moral sense representing preference of such a settlement that would be the most probable to ensure survive of particular society or social group. Regarding Raz’s Normal Justification Thesis creating the most important factor motivating to obey an authority it represents in fact altruistic motive of conduct which stems from Moral sense in the same way as Sense of justice. Sense of justice represents general agreement about desirability of just content of law and social relationships. Distinct willingness to obey unjust law which has displayed in statistic analyses made in different countries seems to be a result of different evaluation. If the case is supposed to be an “easy case” there would be of use the Preemption Thesis. Therefore in this case a valuing subject accepts the decision of authority and it’s consideration of relevant circumstances of particular case as correct. If not, pertinent authority would not be supposed to
be a legitimate authority and law stated by this authority would not be supposed to satisfy claim of correctness (Alexy). Author in the contribution focused on relevance valuation has for a possibility of finding of line between “hard cases” and “easy cases”. Such a delimitation which is in fact determined by valuation of judge depends also to a great extend on argumentation or more precisely supposed aspects of the case determined or at least influenced by argumentation used in a particular case.

THE SO-CALLED PRACTICAL INFERENCE. REFLEXIONS ON STRUCTURE AND RELEVANCE IN APPLICATION OF LAW.

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CHOOSING BETWEEN DECISION-MAKING MODELS: A SPIKE LEE JOINT

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The normative force of rules does not come directly or exclusively from the rule formulations as given but depend significantly on external factors. General dispositions, postures, or interpretative attitudes of those expected to be rule-based decision makers go a long way in making rule formulations into “serious rules” (Larry Alexander), “entrenched rules” (Frederick Schauer) or “exclusionary reasons” (Joseph Raz). The decision or option to treat language seriously presupposes a view according to which “semantic autonomy” of rules or “word meaning” can make a difference in achieving results. In a culture that takes language seriously or in decision-making environments that do the same, the set of results achieved is possibly extensionally divergent from a decision-making environment that does not treat language the same way. Taking a stance according to which it is possible to take a more flexible outlook towards language or a more constricted view towards language, the question then becomes what are good reasons for accepting formalistic, rule-based type models, or particularistic, Spike Lee “Do the Right Thing” type models of decision-making (Alexander/Schauer). From the perspective of the institutional designer it is important to think of these reasons in order to be able to strategically gauge, calibrate and fine-tune the complex of decision-making environments according to the purposes pursued. Even though the institutional designer may justifiably opt for constraining a
more formalistic decision-making environment, his/her own considerations for making that choice are, or at least should be, of a more particularistic type, making his/her enterprise “a Spike Lee Joint” in itself.

HOW LEGAL POSITIVISM IS SELF-EFFACING IN THE RULE OF LAW STATE
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Since the publication in 1994 of H. L. A. Hart “Postscript” to “the Concept of Law”, which was a defence of legal positivism against the criticism of Ronald Dworkin, there was a new wave of discussions about the issue, that culminated in Dworkin’s detailed replies to Hart, Raz, Coleman and Gardner in his latest book “Justice in Robes” (2006). In the light of such a discussion a new assessment of legal positivism in the rule of law state is to be made. Law, Fact, Morals: are they independent spaces? If not, how are they related to each other? Hume’s law offers itself as the fork that disentangles good from bad theories in this matters. Those who want to bridge between those spaces have attacked it. An examination of the main arguments reveals however that Hume’s law still holds, but that there are constitutive rules of meaning that bridge between facts and such institutions as promises, legal systems and social morality. Such rules together with other legal rules and concepts bridge also between law and philosophical morality in many ways, so that the picture is much more complex than most followers of Hume, including legal positivists, imagined. Since in the rule of law state objective moral values may prevail against recognition according to social sources, recognition by the law applying authorities, and so too the theory of legal positivism, is then self-effacing.

PUNISHMENT, INVALIDATION, AND NON-VALIDATION: WHAT H.L.A. HART OVERLOOKED
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One of the fundamental issues to be faced in the era of globalization is the degree to which states and other norm-generating bodies shall be permitted to dominate their members and the degree to which supranational institutions shall be permitted to dominate states and other norm-generating bodies. Building upon the work of Wesley Hohfeld, H.L.A. Hart (in THE CONCEPT OF LAW) explicated two distinct methods of restricting an entity endowed with a legal power: duties and disabilities. Duties forbid certain uses of the power in question, often under threat of punishment, while disabilities invalidate (nullify) any attempt so to use that power. In this short essay, I propose to improve upon Hart’s description of these two methods of control or domination, and to suggest inter alia that punishment is somewhat better for group diversity or autonomy, while invalidation is better for unity or uniformity. I will also add and discuss a distinction of my own, between invalidated exercises of a power and non-validated exercises of that power – something H.L.A. Hart seems to have missed almost entirely. Though invalidation turns out worst for diversity, non-validation turns out best. The legal history of the European Community offers us a powerful example of how the shift from duties to disabilities changed independent nations into subparts of a new legal entity. By invalidating rather than only punishing Treaty violations, the European Court of Justice created a new polity, changed an international convention into a constitution, bootstrapped a treaty into becoming the normative ground of its own signatories. Individual autonomy (binding oneself by a rule) can be most effectively limited by invalidation as well: For example, if a second marriage were possible though punishable, the ability to have multiple spouses would be far greater than it is now, second marriages being null. I conclude that invalidation is an enormously powerful weapon of domination, more powerful than punishment alone as a means to limit the autonomy of groups and even of individuals. Invalidation occurs whenever one normative order declares the rules of another such order to be no longer internally binding, to be nullities within that other order. Non-validation, by contrast, occurs when a normative order refuses within itself to recognize some of the norms of another order, but does not interfere with continued recognition of those norms within that other order. Invalidation is the danger to watch out for, not non-validation. It would be absurd to object whenever a particular human norm is refused legal validity. Indeed, too much validation could be almost as harmful as too much invalidation. We would not wish every family or friendship duty to be recognized and enforced by national (much less supranational) law.
‘IS’ AND ‘IS CONSIDERED TO BE’: ON THE INTERNAL AND EXTERNAL POINTS OF VIEW
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Following Weber and Hart, the distinction between the internal and the external points of view should play several roles: to account for the difference between the prototypical positions of a judge and of a sociologist of law, to be an instrument to criticize “predictive theories of law” and the conception of law as a mere set of commands backed by sanction, and to mark a distinction between rules and mere habits. It should also be able to make clear in which circumstances internal legal statements can be inferred from external legal statements. I argue that a successful definition of the internal and the external points of view, for any rational activity, can be summed up as the difference between “is” and “is considered to be”. In more exact words, one takes the internal point of view when one tries to answer truthfully to a question or when one actually answers it. The only requirement on these questions is that they be understood or understandable. One takes the external point of view when one addresses actual or possible answers to a question without taking the internal point of view. When it is unclear whether a statement takes the internal point of view, its author should be asked whether it is really as she puts it or it is only considered to be so. Another disambiguating scheme is to ask her whether that is her present opinion. With such a distinction it can be shown that, not only in law, but also in other normative subjects, the relations between the external and the internal points of view are peculiar in important respects. This way of distinguishing the points of view eschews most criticisms that can be set against usual ways of doing it. Specifically, legal philosophers who define the internal point of view as that of someone who endorses a certain set of (legal) norms or reasons face several difficulties: not only would it not include “detached” legal statements, it would also leave out some conditional, negative, modal, ironical and hypocritical statements. Moreover, this definition is not neutral as to the competing theories on the nature of law, and can hardly be transposed to games or morality, as Hart intended. Finally, someone who endorses a set of norms can still adopt an external point of view thereof.

CITIZENS AS BROTHERS? A CRITICAL ANALYSIS ON DWORKIN’S FRATERNAL OBLIGATION ARGUMENT
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I examine Ronald Dworkin’s theory of political obligation. In Law’s Empire (1986), Dworkin finds the best defense of political obligation not in the terrain of contracts or obligations of fair play, but in the ground of associative obligations like obligations of family or friends. Based on a general theory of associative obligations, Dworkin develops a complicated argument for political obligation by using intricate devices such as interpretive, fraternity, true community, a community of principle, integrity, and equal concern. In this paper, I analyze the logical structure of his argument: its premises and logical connections. The main premises are: (1) The members have associative obligations in a community which meets four conditions (special, personal, concern, equal). (2) A community of principle accepts integrity. (3) A community of principle meets the four conditions. I then examine each premise. The main point is how an idea of integrity connects with the four conditions. The point of his argument is made clear by referring to Kant’s friendship theory, not to Aristotelian’s. Aristotle says that friendship has two kinds: one between equals, and one between the superior and the inferior. Kant, on the other hand, illuminates how friendship develops between equals: “brothers under a universal father, who wants all bliss” (Kant 1797: Ak. VI 473). Integrity as a universal father assures equal concern among citizens as brothers in a community of principle. Finally, I point out several defects in Dworkin’s argument. Focusing on the third and fourth condition of associative obligations (“equal concern”), it first fails to meet the first condition (“special”). When the best interpretation of national practices involves equal concern among citizens, the best interpretation of global practices would probably involve equal concern among world citizens. Dworkin fails to demonstrate that political obligations are special. His argument also fails to meet the second condition (“personal”). Equal concern assured by integrity is shown from a father to brothers, not from brothers to brothers. Dworkin fails to show that political obligations are personal. In sum, political obligations are not associative.
RAZ AND THE NATURALISTIC CHALLENGE
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According to Raz, the task of jurisprudence is to explain the nature of law. The nature of law consists in law's essential properties. Raz's method is commonly taken to be conceptual analysis, and with some qualifications I argue this interpretation is correct. Leiter's naturalism poses a significant challenge to Raz's approach. In the light of Quine's rejection of the analytic-synthetic distinction and growing doubts about the epistemic status of ordinary intuitions, conceptual analysis as a philosophical method is suspect. And, Leiter claims, conceptual analysis, if valid in any sense at all, certainly cannot establish the essential properties of law required by Raz. In recent work ('Reconsidering a Dogma: Conceptual Analysis, the Naturalistic Turn, and Legal Philosophy', forthcoming) Himma has offered a promising defence of conceptual analysis. In this essay I examine Raz's methodological views and the nature of the challenge posed to them by Leiter's naturalism, and I conclude by considering a way in which Raz's approach might possibly be 'reconstructed' in line with Himma's defence, so as to be able to answer the naturalistic challenge.

THE APORIES OF THE POLITICAL CONSTRUCTIVISM IN J. HABERMAS
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In this paper, I claim to exhibit some of the difficulties that in the practice rise up in the political-juridical position from J. Habermas. In this sense, his speculative proposal about the category of the communicative action, goes to the political plan, in order to constituting political autonomous Right States. As theoretic attempt, it is of big importance this radicalization of the modern project with the recognition for a wider rationality concept. However, in the practice it is an utopia because it is not possible to do this doing without prepolitical contents. When building the systems juridical politicians on a theoretic fiction, Habermas does not have more alternative than doing without the substantial content of the values give birth state the formal procedure preponderance. Realized of it, Habermas "understood the "constitutional patriotism" formula to constitute a civic culture that served to the integration of the members of society. Is it possible to be done without configuradores elements that are not born of formal procedures? The last reason of it resides, in opinion of Habermas, in the perturbing drift that the religious beliefs own. At a first moment, this led laicista that, founded on the clearance between public and private sphere, did not underline the positive ground that for society own the faith to a position. In his last book, entitled Between Naturalism and Religion, Habermas has gone on to understand the religious beliefs as a factor insurer of the solidarity brings in the citizens, every time that we find our at a historical moment in what, how he says, "the sources of the solidarity have been dried". Revealing of this change is the meeting that kept in the Catholic Academy of Bavaria with that Cardinal Ratzinger. Habermas claims the "epistemics content of the religious beliefs" opposite to the primacy that the positivism granted to the sciences, and pleads for an enriching dialog between Philosophy and Theology.

THE IDEA OF LEGAL PATHOLOGY
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This paper explores the idea of legal pathology. The term “pathology” is well-known in medicine and the social sciences, though it is often undefined. Thus, in Freud's famous book The Psychopathology of Everyday Life there are discussions of slips of the pen, slips of the tongue, bungled actions and the like, but an explicit definition of “psychopathology” is not supplied. In legal philosophy the term is used to refer to the partial or nearly complete disintegration of a legal system, a sick system, in some sense. A discussion of legal pathology is found in H.L.A. Hart's The Concept of Law (2nd ed., 117-23). In this situation, “the official sector may be detached from the private sector, in the sense that there is no longer general obedience to the rules which are valid according to the criteria of validity in use in the courts.” Hart then goes on to list various factors that may cause the breakdown in different degrees: revolution, enemy occupation, anarchy, and banditry. A richer and somewhat different conception of legal pathology may be derived from many places in the work of Lon L. Fuller. For both Hart and Fuller there is a contrast with legal pathology’s opposite, the rule of law, though for Hart this contrast seems to be more grudging. In Fuller, legal pathology, also a matter of degree, is connected to the failure to adhere to the eight requirements for successfully subjecting
human conduct to the governance of rules: generality, promulgation, prospectivity, clarity, stability, etc., and congruence between declared rules and the acts of administrators. These “implicit laws of lawmaking” (The Principles of Social Order, rev. ed., 175-85) comprise the “internal morality” of law. These two somewhat different conceptions of legal pathology may be usefully compared with a notion of pathology derived from books VIII and IX of Plato’s Republic (structural) and the notion of “general pathology” found in the work of Rudolph Virchow, the founder of cell pathology, in the 1850s (quantitative departures from the normal). The consequences of the idea of legal pathology for the obligation to obey the law are then examined.

THE HERMENEUTICS FUNCTION OF THE PRINCIPLES

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The object of this study is to briefly systematize the main doctrinal understandings related to the theme in perspective, hereby making it clear that due to how broad the issue is, we have chosen to limit the approach as to the Hermeneutics unity in Law, the Constitutional Hermeneutics in search of security and rationality, the conquest of the normativity of constitutional principles and the concept of Hermeneutics as concretization: the constitutionalization of all Judicial Hermeneutics. Thus, we emphasize how the interpreter arises from the interpretive method starting with the production of a sense originated from a process of understanding. Therefore the aim of this article is to demonstrate that the simple application of a norm quite often does not meet the sense of justice. For this purpose, the evolution of the philosophical thinking will be presented from the Middle Ages to the Enlightenment period as a theoretical bases for the development of the theme. Finally, we aim to focus the return to ethical values, demanding a substantiated and interpreted judicial discourse, sustained in argumentation, in the search of a consensus.

The theoretical-rhetorical concept meets pragmatic thinking in the fact that, when seeking solutions, it immediately returns to the problem, and not to the system, in a true inversion of perspective. Thus, the principles reflect the different values existing in a pluralist society. Furthermore, it is an instrument which, through Hermeneutics, will seek fair solutions without leaving the judicial security aside.

THE POSSIBILITY OF ANTINOMY

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0. Antinomy is a relation of incompatibility between two valid rules in the same legal system. The aim of this paper is to answer three questions: 1. Is antinomy possible? 2. How is antinomy possible? 3. Is antinomy between a rule R2 and a meta-rule R1, which concerns the validity of R2, possible? 1. Is antinomy possible? I will deal with two opposite answers. 1.1. Eduardo García Máynez (1959): the principle of non-contradiction, which applies to descriptive sentences, applies also to prescriptive sentences. Therefore, it is impossible that two contradictory rules are valid in the same legal system. 1.2. Hans Kelsen (1965): the principle of non-contradiction does not apply to prescriptive sentences. Therefore, it is possible that two contradictory rules are valid in the same legal system. 2. How is antinomy possible? The existence (validity) of a rule in a legal system is determined by – and only by - the constitutive meta-rules on validity. The existence (validity) of a rule in a legal system is not affected by its inconsistency with other rules. Consistency is not a necessary condition of validity in legal systems. 3. Is antinomy between a rule R2 and a meta-rule R1, which concerns the validity of R2, possible? Antinomy between two rules holds only if the two rules concern the same matter. This is why there cannot be antinomy between a rule R2 and a meta-rule R1, which concerns the conditions of validity of R2. R1 does not concern the same matter of R2, but it concerns the conditions of validity of R2.

KELSEN’S ‘UNRECHT’

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I mean to argue that Kelsen’s unsuccessful attempts to provide a characterization of the concept a legal delict (or legal ‘wrong’, ‘Unrecht’) were doomed to fail in the frame of his own legal theory. I shall also maintain that this does not pose any fundamental objection to his theoretical project. My argument will be grounded on a discussion of Kelsen’s ‘Normsatz’ and the role of the concept of a legal sanction in the Pure Theory of Law. In what concerns the first point, I will argue that (some common readings notwithstanding) it should not be understood as an expression of any principle or theory of norm-individuation, and that, on the
contrary, it rather presupposes some theory of norm-individuation (which Kelsen does not explicitly present, although it may be aptly reconstructed from several passages of his texts); as to the second point, I intend to question the widespread idea that in the Pure Theory legal norms are conceived as sanction norms addressed only to legal officials.

RETROACTIVE APPLICATION OF LAWS AND THE RULE OF LAW
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This paper draws on a formal conception of the rule of law and analyzes a possible test to determine when we have a retroactive application of laws. From this a two stage process of the analysis of retroactivity is put forward.

ON THE DEONTIC CHARACTER OF COMPETENCE NORMS
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The purpose of the present essay is to analyze the deontic character of the competence norms, more than to define the concept of competence. Competence, nevertheless, will be understood as a power given by the legal system to a certain authority. In this paper I will not distinguish between the possible kinds of powers, but consider the concept in a more general way, as the capacity to create, modify or extinguish legal relations or positions. Competence norms will be analyzed regarding the case of a normative conflict, and since there are many ways of describing a conflict, it will be necessary to define the normative conflicts and to try to determine their sources and nature in a very general way. For the purpose of the analysis, I shall propose a concept of norm and define the function of competence norm as secondary norms in the sense of Hart in order to establish the grounds on which the discussion will be held. The relevance of determining the deontic character of competence norms derives from the idea that in order to do something one has to have the possibility of doing it, and also form the various possibilities of interpretation of the character of the competence norm as a permission, an obligation to exercise a certain given power, or as a duty whose exercise depends from a given situation. The first idea to explore is that O-norms imply P-norms, and in what sense or with which character should that permission be interpreted. The second is whether the deontic character of the competence norms is an autonomous character or a complex modality or combination of independent characters.

THE PARTICULARITIES OF POLITICAL OBLIGATION
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Contemporary theorists agree that a political obligation – understood in its narrow sense as a reason to obey the law – is both moral and ‘content-independent’. They also agree that the existence of a reason with these characteristics alone is not sufficient to establish a political obligation. They differ, though, as to the additional properties that such a reason must possess for a political obligation to obtain. Through engagement with the influential work of John Simmons on the subject, I consider several qualities – including the requirement of ‘particularity’ – that are prominent candidates for inclusion in an account of political obligation and reject all but two of them.

VALIDITY OF LEGAL NORMS AND CONFLICT RESOLUTION
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The validity of legal norms indicates that legal norms exists or remains with a valid legal system. With regard to the validity of legal norms, two distinctive and closely correlated issues – validity identification and validity source - shall be differentiated. A hierarchical relationship of legal norms are the embodiment or implementation of systematism of legal norms, which is recognized and analyzed from two such aspects as equal level norms, upper-level and lower-level norms. They apply different rules of validity respectively. With the development of Chinese rule of law, the basic levels of legal norms have been established. In accordance with the Constitution and the Legislation Act, the levels of legal norms mainly include equal level, upper-level and lower-level. In addition, there are some special relationships that cannot be classified as the foresaid levels or
holds both. Norms belong to the equal level shall abide by the principle of “consistency”, while norms belong to the upper-level and power-level shall conform to the “no-contradicting” principle. Those special relationships between norms shall be decided by law. As a consequence, the major rules to resolve conflicts between legal norms are as follows: when there is an upper-level and lower-level of norms, the applied statutes shall be ascertained according to the principle that upper-level statutes shall prevail over lower-level statutes; with regard to equal level statutes, either special provisions prevail over general provisions or new provisions prevail over old provision; as to other norms with special relationships, the resolution is either to report for arbitrament or to make concrete analysis and judgment on specific issues.

THE ECONOMIC STRUCTURE OF TORT LAW: MARKET-BASED OR COMMAND AND CONTROL?
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Tort law is a branch of private law. The function of private law is to facilitate market transactions. Only in rare circumstances should courts intervene to make decisions for autonomous individuals. However, most of economic analysts have modeled tort law from public law perspective. Under this approach, people are responsible for not complying with some specific physical or technological standard which would have been set by courts based on trade off between tortfeasor’s precaution costs and victim’s expected damage. This is a kind of command and control which assumes that courts like firms shall bypass market to direct resources’ use. Due to the characteristics of judicial process, however, courts are just not institutionally good at this. A typical economic model of tort law is like this: \( L(x,y) = p(x,y)D + A(x) + B(y) \) In the equation, \( A(x) \) and \( B(y) \) represent victim’s and tortfeasor’s precaution costs respectively; \( p(x,y)D \) means the victim’s expected damage which would be reduced by victim’s \( x \) units of care and tortfeasor’s \( y \) units of care; \( L(x,y) \) is the social loss. To minimize social loss, the conditions of \( Ax = pxD \) and \( By = pyD \) should be met. When the precaution measures taken by victim or tortfeasor are limited to physical or technological dimension, as many analysts have assumed, this model ignores the property boundary and institutional comparison. Consequently, no liability rule and strict liability rule are seen as symmetric; the utilities of tortfeasor have been taken into account in intentional torts; negative duty and affirmative duty cannot be distinguished; a more capable person has to bear higher standard of care; the reason so many torts arise is due to deficiency of tort enforcement. This model, as Brown said, is a production model. Therefore, a centralized administrator might want to achieve a certain outcome and then ex ante prescribe some specific standard to be complied with. The characteristic of tort law, however, is that a unique not a statistical damage has already occurred and the attribution of responsibility has to be done. An ex ante prescribed standard is not a good benchmark against which whether the injurer is liable or not should be judged. This paper would argue that a transaction cost-adjusted property right model would provide a more coherent and more simplified explanation of tort law.

OVERRULING AND STATUTE-CORRECTION
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The issue of overruling, which has been neglected in the field of legal theory and methodology, is still the most difficult “aporia”. Is a judge really allowed to change precedent, and if allowed, under what conditions and how far can he leave from the precedent? No common and certain framework for analyzing these problems between the different legal orders (the Continental and the Anglo-American ones) has yet been presented, so that both the theory and the practice of overruling remain very confused throughout the world. These circumstances led me to become interested in the task of constructing such an unified framework which could help to clarify the fine correlations between fundamentally as well as structurally different legal orders and to reconsider the theory and the practice of overruling in Japan, Germany, England and USA. One of the best steps may be to pay attention to how great is the gap between explicit-overruling and implicit-overruling in each of these countries. But I know it would be too reckless for me to take such a difficult step directly, so I would rather adopt an approach to analyze the similar but well-discussed issue of statute-correction as a transmitter. This is namely the very approach to solve the problem of overruling in connection with or in comparison with statute-correction and I think this to be very advisable in that there are many parallel aspects between both the statute-correction made by a judge as an exception to his statute-bound judgments in the legal order of Continental law, and the overruling made by a judge as an exception to his precedent-bound judgments, namely
stare decisis. The procedure to pursue this total task could be divided into three steps. The first step, which is confined within the scope of Continental law, confronts the recent discussions about conditions, limitations and border of statute-correction with the problem of overruling. The second step, which would be to focus on the Anglo-American case-law system, clarifies such questions as to what extent the theoretical clarification of overruling and statute-correction in the scope of Continental law is applicable to the case-law system. In the third step we should synthesize the results of the above-mentioned comparison between Continental and Anglo-American law and illuminate the sequence of fundamental structural differences throughout the representative legal orders. My presentation this time will focus only on the first step, in order to save time.

THE POSSIBILITY OF AN ERROR IN THE LEGAL INTERPRETATION

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The aim of this paper is to consider possibility of making an error in legal interpretation process. The inspiration to pose such a question comes from the Polish legislature where one of the requirements of an appeal for cassation is erroneous interpretation of law. The assumption that needs to be made is a commonly accepted thesis that there is more than one right answer in legal disputes. The opening question requires consideration of the concepts and types of error distinguished in logic and philosophy and eventually making comparisons to some of the judicial interpretations which were held to be erroneous. Hypothetical answer is as follows: one cannot speak about the error but rather kind of disagreement between superior and lower courts. However discourse of judicial practice requires a term, which would suggest existence (validity) of unquestionable rules of interpretation. This requirement is connected with the legal certainty conceived as an idealizational and therefore counterfactual assumption about the legal order.

CRITERION FOR ASSESSMENT OF THE APPLICATION OF LAW AS A GENERAL ONTOLOGICAL CRITERION OF LAW

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In the paper concerned, the author advances the thesis that there is a relation between the adoption of a criterion of assessment of a resolution made in the application of law by a the court and the essence of law, this being proven through the assumption stating that what law "is" depends upon what is considered to constitute a criterion for assessment of correctness of such resolution. The above stance has been derived from three basic assumptions: on the dynamics of law, on the functioning of law as one of the basic manifestations of public discourse, and on resolutions in respect of application of law being permanently subject to assessments. In the context of the thesis so proposed, the author tackles the issue of "existence" of more than one correct resolution in the application of law, and of an attempt at another approach to the problem of "hard cases". According to the above stance, the system of law interacts both with other normative systems, e.g. social norms, and with other dimensions of social life. This interaction is the driving force behind its dynamics. Law, as a set of applied rules of behaviour, constitutes one of the basic elements of social discourse, frequently setting the frameworks for the latter. On the other hand, individual resolutions made in the application of law are subject to everyday assessment against several criteria. The analysis performed herein concerns seven criteria for assessment of correctness of resolutions: fairness, internal coherence, external coherence, certainty, rationality, effectiveness and legality. The relation referred to above is considered in respect of each individual criterion.

JURIDICIZATION OF THE MULTILATERAL TRADE SYSTEM

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This paper aims at analyzing the juridicization of the multilateral trade system and some of the reasons for its increase, underling the role of international rules in the process and the tension between juridicization and politics in the relation between the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) and the organs created by Dispute Settlement Understanding (DSU) to support the DSB in discharging its functions (panels and Appellate Body). In order to do so, it is
comprised of four sections. Firstly, the debate about juridicization in international relations is presented according to Abbott et al (2000). Secondly, since there has not been any modification of other elements indicated by the theory, the method discussed in the previous section is applied to analyze the regulation of dispute settlement in the multilateral trade system (1948-2005). Thirdly, the decisions of cases where measures related to the conservation of exhaustible natural resources were challenged and justified under Article XX(g) of GATT are subject to content analysis in order to establish the level of recourse to normative elements in their justification. Finally, this article concludes showing that notwithstanding the fact that the juridicization of the system did not alter from the Tokyo Round to WTO, more normative elements are used for motivation of the decisions taken by WTO. Concluding that the excessive focus on the process of institutionalization through conventional rules (treaties) and the competent organ does not reflect changes brought about by other elements (what is due to Abbott et al (2000)’s reference to Hart’s “Concept of Law”), this article suggests that panels and the Appellate Body may soon be considered to be the competent organs to settle disputes in the WTO due to international customary law.

ECONOMIC AND SOCIAL DISCRIMINATION IN RISK INVESTMENT
Isabel Novosad
The intention of this paper is to examine certain aspects referred to direct and indirect investments of industrialized countries with emerging economies, from the perspective of the human rights incorporated to the international legal system in 1948. There are two thesis that are spread within the foreign trade exchange that I consider contradictory and slightly deceiving: 1) that countries with emerging economies must necessarily produce a bigger profitability than industrialized countries, and 2) that credit access conditions must necessarily depend on the economic and social position. It is demonstrated that the idea of risk investment is a discrimination due to economic and social position on which speculations are articulated, and these reduce the possibilities of enjoyment of human rights, such as: the right to work with an equal and worthy remuneration that assures the worker as well as their family the necessary social services, health and well-being, and especially feeding, housing, and medical care. Among the consequences of the application of such thesis, the passive “over indebteding” is analyzed and the financial collapses is emerging countries that transcend the national frontiers affecting too the rights of people in industrialized countries. Finally, I suggest including preventive corrections on investment implementation to reduce the breach between proclaimed rights and public goods affectation.

WHOSE PROPERTY? ‘INTELLECTUAL PROPERTY’ AS A CONTESTED CONCEPT
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This paper explores methods by which the law regulates the use and production of knowledge by applying ‘property’ concepts to intellectual objects. ‘Intellectual property’ lacks a straightforward meaning and does not have a simple or generally agreed definition. Instead, it is an essentially contested concept that is given a variety of definitions and that consistently defies attempts to provide accessible but enlightening insight as to its meaning. The awkward question of what ‘intellectual property’ really means is often sidestepped, with the term used as a vague reference to an ill-defined – or perhaps even an undefined – idea. This paper proposes that none of the common methods that are employed when trying to define or explain ‘intellectual property’ adequately elucidates its meaning. Each of these common definitional strategies provides a definition that performs a practical or symbolic purpose in some circumstances, but none distinguishes the body of rules from the object of regulation. None addresses the disjuncture between the object of intellectual property regulation and the ideational object that inspires it. As a consequence, none satisfactorily describes what is meant by ‘intellectual property’. The paper raises questions about whether ‘intellectual property’ does indeed have a fixed and settled meaning, necessitating a search for an alternative definitional method if we are to obtain a meaningful understanding of what intellectual property is. Examining ‘intellectual property’s constitution and drawing inferences about the way in which it operates might offer insight. By applying metaphysical analytical tools to intellectual property’s core doctrines – where ‘metaphysical’ is broadly construed to include methodologies from a range of philosophical, jurisprudential and critical schools of thought – the paper considers how society constructs law generally, and intellectual property law in particular. It examines how intellectual property law’s doctrines construct their own objects of regulation, which can be distinguished from the ideational objects and their documented forms that are important to discerning and distinguishing between what is and is not regulated by intellectual property laws. The extent to which these components of intellectual property can be considered to be brute or institutional facts, or legal fictions, is explored in order to help explain how
society constructs and internalizes intellectual property law and its objects. So too are the processes by which this construction comes about. The paper concludes with proposals about ways in which the essentially contested concept or empty/ floating signifier of ‘intellectual property’ can be imbued with meaning by those who use it.

THE SKEPTICAL NON-POSITIVIST ACCOUNT OF NORMATIVITY: AN APPRAISAL
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In my presentation I intend to discuss the account of law’s normativity defended by a certain kind of non-positivism. Non-positivism is not less internally differentiated than legal positivism and, which is most remarkable in this context, we have no unitary non-positivist theory of normativity. Before one can proceed to discuss the treatment that the normativity of law receives within non-positivism, thus, they are required a preliminary definition of non-positivism and an introductory qualification of its main variants that at are of particular significance for the study of normativity—to wit, legal scepticism and legal objectivism. The focus of the paper is on legal skepticism. I intend to reconstruct and discuss the main thesis about normativity defended by sceptical non-positivism, the no-independence thesis, in order to assess to what extent that thesis contributes to advance our understanding of law’s normativity. The no-independence thesis designates the reductionist claim that normative items are entirely coextensive with, and so identical to, arrangements of facts: normativity does not single out a peculiar dimension of human experience and understanding but is rather the resultant of some combination of social facts. My argument will address the reductionism entailed by the skeptical account of normativity. Reductionism will be argued to make it impossible to explain the mechanism by which normative items can be regarded as universally and objectively authoritative and so action-guiding. For, social facts do not have the necessary resources to be action-guiding in the peculiar way in which law can guide action. Therefore, a conception equating normativity to factuality can at its best explain some form of action-guidance but is constitutively unable to show how they can emerge practical reasons holding also for those individuals who do not consent to the law.

UNDERSTANDING GLOBAL COHERENCE IN LEGAL PLURALISM WITH FORMAL THEORY
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It is the application of formal theory to science and engineering that has greatly advanced technology over the last three hundred years in relation to facts. The formal representation of legal process –the entanglement of law and fact -- a subject of study that can be traced from Aristotle’s geometric definition of ‘justice’ through Lull’s mediaeval notion of universal logic for natural philosophy, law and medicine, and Leibniz‘ ‘calulemus’ to modern applications of law in computer data- modelling, connectionism, quantum information processing and consciousness studies. The underlying principle is a transdisciplinary boundary-condition argument over the real world. Law however tests classical methods to breaking point requiring an integration of logic, language and cognition with human and social behaviour. The law has highly developed theories on probability, evidence and causation. It combines both quantitative dialectic with qualitative rhetoric. The law provides the social order that is the basis of our civilization and daily relies on very sophisticated examples of emergent consciousness both in the reasoned decisions of judges (in law and fact) and in jury verdicts (on law applied to facts) which are acts of corporate consciousness where no member of the panel has to understand every point at issue. Pursuing the formal approach to the nature of law to understand the requirements for the operation of legal pluralism in a post-modern age of global interoperability forces us back on to the foundations of legal theory and the very meaning of law. It now seems that law is realised by emergence, a natural process that needs to be recognized by any method of legal positivism if coherence is to be achieved. This arises from a monadic unity that can be fully explored within category theory as the formal but very different counterpart of Hohfeld’s correlatives. The theory of rights provides examples of quite different approaches for coherence needed in the twentieth first century globalized world as can be seen in the suspension of human rights in armed humanitarian intervention with the example of Iraq or the Sudan.
Defeasible reasoning where inferences depend (informally) on implied conditions can be better understood when made formal and indeed needs to be formalized for implementation in computational systems of practical reasoning such as in law and in the use of artificial agents. Semi-formal Aristotelian syllogisms are now expressed within modern formal methods as Schütte-Ackermann language where $\Gamma \rightarrow \phi$ cannot formally derive with tertium non datur the defeasible expression $\Gamma \rightarrow \neg \phi$. A deeper examination of these terms including the meaning of the negation ($\neg$) is required to represent defeasance particularly in predicate and modal logic as needed for deontic expressions in normative systems. The very formal topos with a higher-order slice category can provide the level of abstraction to handle rigorously informal concepts like non-monotonicity and alternative reasoning in quite disparate fields with the same pullback.
Weber has criticized the moralization of law for attempting against its rationality, because, for him, the values would be relative to its historical context. For this reason, he sustained the need to care for the legitimacy of law in a formal way. Such position was due to the weberian skepticism about the possibility of a cognitivist moral in general, being substantive or procedural. Nowadays there is, still, who sustains procedural positions as form of handling juridical legitimacy, like Luhmann, Ely and even Habermas. However, nowadays as well, theoretical positions had reborn proposing a substantive moralization of law, like that of Dworkin and Alexy, called post-positivists theories. The paper aims present such a problem in Habermas' philosophy of law, because he accepts both, the diagnosis of the weberian analyses of the modern rationalization that implies a skeptical position in relationship to the possibility of a substantive morals, and the possibility of a cognitivist morals, although procedurally conceived. The paper analyses the implication that such a procedural cognitivist morals could have over the juridical legitimacy. The study concludes that in the “Tanner Lectures ” [1986] Habermas had a more procedural position, what meant that he was not skeptical about moral, but he took too seriously the weberian diagnosis about the possibility of a cognitivist morals, specially a substantive one. Since, in “Faktizität und Geltung” [1992], for all that he continues to sustain a procedural cognitivist morals, he seems to be much more confident about the products of the procedurally discursive morals, so that such products could have a different implication over the juridical legitimacy.

FROM IDEAL MORAL THEORY TO NON-IDEAL POLITICAL PRACTICE - A SKETCH
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Moral philosophy, including normative political theory, usually starts with two simplifying presuppositions which facilitate its task to select generally acceptable moral standards: first, that general agreement on such standards will be reached after careful reflection, and secondly, that all or most people will abide by the agreed on standards. Taken together, these presuppositions assume a hypothetical state of moral perfection that helps to assess alternative moral conceptions from a general point of view by abstracting from various complications of real social life. Any moral conception, however, that is based on the assumption of moral perfection is, in a sense, ideal, in a twofold way: one the one hand, it provides the normative ideal of a desirable social order governed by a generally shared public morality, and on the other, it is also idealistic in the sense that it simplifies the complicated features of moral reasoning under conditions of social reality. Thus, an ideal conception of morality will not suffice to guide our moral reasoning in view to social reality which obviously is not morally perfect in many respects. Such a conception can serve only as a starting point for a comprehensive public morality that fits to our real world with its moral imperfections, be they moral disagreements or moral wrongs. These considerations suggest that one should differentiate between two sorts of moral theory: ideal and non-ideal theory. Ideal theory tries to sort out general acceptable standards of public morality by presupposing a state of moral perfection that warrants moral agreement and moral compliance. On the basis of such a morality, non-ideal theory deals with the more mundane problems that arise from moral imperfections, such as moral disagreement and non-compliance. I will leave moral disagreement aside and restrict myself to non-compliance, which can appear in two forms: either in the partial form of occasional wrongdoings committed by a small number of individuals or in the massive form of frequent breaches of duty by a great many people, i.e. moral corruption. While a lot of theoretical reasoning has been dedicated to the first form, especially the theory of punishment, there is not much philosophical literature on issues of moral corruption. In my paper, I want to sketch an approach to non-ideal moral practice under conditions of moral corruption.
LAW, ETHICS, ECONOMY: INDEPENDENT PATHS OR SHARED WAYS?
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The Atlantic civilization, determining part of the near future of our global village, over the past centuries has been composed of two definitely diverging ethoses and social philosophical inspirations, differing also by their very foundations. The contrasts are perhaps most conspicuous today as to be seen in the difference between approaches to life as a struggle and to law as a game within it. No doubt, there prevails the rest of a European Christian tradition, characterized by communal ethos, with provision of rights as counter-balanced by obligations, in which priority is given to the peace of society, and a traditional culture of virtues is promoted to both circumvent excesses and acknowledge human rights with a focus on prevention of and remedy to actual harms. It is such an environment within which homo ludens as a type of the playful human who is both dutiful and carefree—entirely joyful—constitutes a limiting value. If and insofar as struggle appears at all on the scene, it is mostly recognized as a fight for excellence. As a pathologic version, the loneliness of those staying away from participation may lead to psychical disorders which require subconscious re-compensation, the symbolic sanctioning of which was accomplished by psychoanalysis. There has also evolved an Americanized individualistic atomization of society, expecting order out of chaos, with absolutisation of rights ascribed to individuals, all closed back in loneliness. As an outcome, obligations are circumvented by entitlements, and unrestrained struggle becomes a normal course of life with the deployment of human rights to neutralize and disintegrate community-centered standards. ‘Life is struggle’—the hero of our brave new world enunciates it as a commonplace with teeth clenched, convinced that life is barely anything but fight against anybody else (as an improved version, hailed as civilisatory advancement by re-actualizing—under the pretext of maximizing the chances of—the ominous bellum omnium contra omnes, formulated once in early modern England). Starting from the common deployment of some symbolical cynical acid in foundation of modern formal law but developing through differentiated ways of how to search for reason and systemicity in law, the conceptual and methodical effect of this very division is shown in both the perspectives for curing malpractice in law and the role of ethics in economy.

LAW PHILOSOPHY OF FREEDOM
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The paper deals with criticizing the concept of freedom in legal philosophy. What have been the shortcomings of the well-known philosophies of freedom and how could they be amended? This is the issue, which the paper aims to address. One of the most recurrent and perennial problems of law philosophy since its genesis has been that of freedom of action. Therefore it is surprising that even today the meaning of the word “freedom” is not well defined. It is too ambiguous. Its vagueness makes talks about freedom ineffective and sometimes senseless. During the talks people do not understand each other. Both straggling parties love freedom, fight and dye for being free. A fundamental logic-linguistic confusion of terms underlies this paradoxical situation. This confusion is to be discovered and eliminated. What does the term “freedom” mean? Evidently, an inquiry into freedom necessitates an inquiry into the notion of action. On the other hand evaluating an action always brings with it the problem of freedom of the action under evaluation. Hence, the key issue of any critical investigating freedom is natural combining the notions “freedom” and “action”. I guess that they are well combined in the notion of free activity. This notion is used in algebra of actions. The mentioned algebra is based upon the set of free operations of subjects. By definition the free operations are called actions. Thus by definition actions are free (operations). By virtue of action algebra it is easy to demonstrate the following very important circumstance. The word “freedom” is a homonym. It has at least two different axiological meanings. Each of the meanings is an evaluation function. One of them is expressed in the natural language by “free from x”. The other is expressed in the natural language by “free for x”. The axiological variable “x” represents an axiological form of action. In algebra of actions the axiological variables take their values from the set (“good”, “bad”). The evaluation functions take their values from the same set. The “freedom for x” and the “freedom from x” are opposite evaluation functions, which are not constants. Unfortunately people believe that there is one and only one freedom and that it has a constant value. This belief is a fallacy leading to tragic confusions. The paper submits precise definitions of the freedom-functions by means of evaluation tables. These definitions effectively destroy the mentioned fallacious belief.
CAN DEMOCRACY STILL BE POSSIBLE IF FREE-WILL PROVES TO BE JUST AN ILLUSION?

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It is well known that natural sciences have not been able to establish so far if men are really able of choosing what to do or if this is just the most general belief of our times. Anyway, we must be ready to accept that free-will is only an illusion, if science develops towards proving that, which is a possibility. If such a thing may happen, a great revision will be made necessary in political philosophy, philosophy of law, social philosophy and other fields. Free-will seem to be the basis of most of the theories concerning democracy, moral and juridical responsibility, just to mention some of the key concepts that are the basis of contemporary societies. This paper intends to be an essay about the fact that Baruch Spinoza assumed free-will as something not real and yet not only considered himself capable of establishing good basis to law and responsibility but also defended a very peculiar conception of democracy that might be surprisingly important for contemporary societies in a near future.

THE CONNECTIONS BETWEEN MORALITY AND LAW FROM A LOGICAL POINT OF VIEW

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The problem of relationships between Law and Morality is one of the classic subjects that accompany the history of philosophy of Law. Eugenio Bulygin and Robert Alexy had on this subject an interesting polemic during the decade of 90. Traditionally the positivism proclaims that there is a separation between Law and Morality, position defended by Bulygin, while other philosophers claim that there is a necessary relationship between Law and Morality, like Alexy and Dworkin. The differences between both theoretical positions are more of methodological nature than of content. In the heart of this methodological debate, the use of deontic logics with specific deontic-modal operators for the representation of moral and juridical norms, formulated by Roberto Vernengo, Newton da Costa and L. Z. Puga, presents a new focus and provides a better and deeper analysis of the relationships between the moral speech and juridical speech. The different theses about the relationships between morality and law, as for example, if morality can repeal juridical norms, or vice-versa, can be represented and analyzed, so the consequences of these theses can also be derived and appreciated from a rational point of view. These new logics offer a new instrument to guide the debate on the intersection or not between the morality and law, as the controversy between Bulygin and Alexy.

TEACHING PROFESSIONAL ETHICS: A RESPONSE TO A STUDENT SURVEY

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This discussion is based on data from a broader investigation into students’ understanding of the concepts of creativity, sustainability, ethics and cross-cultural sensitivity. The study used a group of 40 second-year students at Macquarie University. We were interested in the students’ own perceptions – how they themselves saw these ideas and their significance. In the part of the interviews dealing with ethics, students were asked to explain what they understood by the idea of ethics, particularly in the context of their future careers. We offer an analysis of the range of student responses, dividing the responses into categories representing the different conceptions of ethics that seem to be reflected in what the students said, and providing salient verbatim quotations to illustrate these conceptions. There are many different ways we could have categorized the responses to our survey. For the purposes of the present discussion we chose a developmental approach, selecting categories that allowed us to arrange the responses in an order representing what we take to be different levels of ethical understanding or maturity. We defend this approach in some detail, then argue that despite wide variations in individuals’ conceptions of ethics – illustrated here by our survey responses – ethical disagreements are in fact less intractable than is generally recognized. The variety and diversity of individuals’ ethical views can hide the fact that underlying them are values that are widely shared. We conclude by pointing out some implications this has for university courses in professional ethics, illustrating our conclusion with an example from legal ethics.
CONFLICTS OF DUTIES IN LEGAL ETHICS
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In order to specify the moral duties of legal professionals, a theoretical groundwork is needed that clarifies the relationship between lawyers’ specific professional duties and their general ethical duties, and elucidates the dependence of moral duty from their various sources. Five sources of moral duties are identified and described: namely, (1) well-founded moral norms, particularly those of philosophical or religious foundation; (2) legal norms; (3) social conventions, including settled codes of proper professional conduct; (4) personal commitments; and (5) personal moral conscience. These sources of moral duties, as well as their internal variations, may diverge and even oppose, giving rise to moral dilemmas. There is no straightforward answer to conflicts of moral duties based on a hierarchy of their sources; but a few guides are suggested for some of the major conflicts, like the ones between duties justified because of the nature and content of the obligation and duties justified because of reasons independent of content. The trickiest conflicts are the ones confronting personal moral conscience with objectively or inter-subjectively based moral duties. Sources of moral duty that are not relative to subjects, such as law or settled conventions, may benefit from a presumption that favors obedience to them rather than to personal conscience. However, a clear and firm inner conviction about which moral norms are well-founded cannot be ignored, so that to follow one’s well thought-out conscience against legal or conventional codes of conduct is sometimes justified.

HUMAN DIGNITY IN THE LEGAL AND BIOETHICAL DISCOURSE
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I. Inflation of arguments based on “human dignity”. When we read papers concerning to the bioethics or medical law, especially in Germany, then we notice soon that there are so many arguments appealing to the principle “human dignity” that we can speak even of its “inflation”. It is unnecessary to say that the “human dignity” would be an “empty formulation”, unless that “inflation” would be reduced by determining its meaning so clearly. II. Functions of “human dignity”. The concept of “human dignity” works as normative criteria to exclude some kinds of cases as exceptions from typical cases involved in rules, because unendurable results would happen when the rules would be applied to such kinds of cases. In this sense it refers to unbearable concrete results just now or in the future and reflects directly a sense or intuition of values which is roused by them. III. Approaches to “human dignity”. There are a lot of approaches to elucidate the meaning of “human dignity”; ontological, theological, idealistic, sociological, biological, argumentative and so forth. I believe that approaches to point out only properties which shall be immanent in human being, such as reason, sociability, solidarity, divine creation etc. face inevitably on the “naturalistic fallacy” or the dilemma between ideal world and reality. I try to search for a new approach to “human dignity” by reflecting on the process of how we in fact realize it.

VIOLENCE AND INTELLECTUALS
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Violence is probably one the questions that more perplexity provokes on social scientists. A society that (like ours) has come to rational keys to solve problems, instead of using them, adds new ways of violence to those which could be called classical. This paper means to analyze the role of intellectuals related with different forms of violence, specially that developed by public power, both legitimate or illegitimate, being one of the topics in discussion whether power’s force can be named violence or not. Another issue, directly related with this, that concerns the professionals of the intelligence is wheter past should be forgotten or remembered and, above all, which is the intellectual responsability on that point.
THE ETHICS OF LAW
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This essay examines how the ethics was and are distanced of law and economics theoretical problems by the positivism determinant influence on these sciences. Firstly, it was made a brief historical approach to philosophy of sciences to make evident the importance of the paradigm change occurred from The Enlightenment, when the instrumental reason was transformed hegemonic. In this way, the structure of knowledge production is a very important mechanism to legitimate the capitalist order. On the other hand, it was searched to show that the social sciences can not to exist separated of ethical questions. Although the positivist effort to exclude the ethical questions from the sciences, they come back as in the legal as the economics reasoning, even so latent or secondary.

A RIGHT TO PUNISH?
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This paper critically explores the basis and the goal of punishment from the standpoint of the right to punish. Studies and works dedicated to punishment are scarce compared to those dedicated to crime theory or some aspect thereof. This paper reviews the main doctrines that have dealt with the theme of punishment from antiquity to the present, not limiting itself to the legal-philosophical sphere, but also analyzing the contributions from other social sciences. But here it is especially studied punishment in the area of criminal law. Via a dual structure, the distinction is made between two historical traditions, with diverse bases and functions, around which different sorts of theories and schools have developed: that of punishment and retribution and that of deterrants and prevention, as well as the mixed theories between both of them. This paper uses a critical point of view, making an examination of deviations in the theories considered in light of the facts. As Voltaire puts it “we ask that justice should not be dumb, as she is blind, that she makes man aware of the blood of other men... Punish, but punish usefully. If justice is pictured with a blindfold over her eyes, it is most needful that reason should be her guide”.

RETRIBUTIVE AND COMMUNICATIVE THEORIES OF PUNISHMENT
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The paper is concerned with the relation between retributive and communicative theories of punishment, and attempts to develop joint retributive-communicative theories. The central issue for such a theorist is to show why condemnation or censure need taken the form of hard treatment. The paper concentrates on the dispute between two leading protagonists, Anthony Duff and Andrew von Hirsch, and considers whether a third such theorist, John Tasioulas, offers a way forward.

CRIME AND MODERNIZATION: ECONOMIC ANALYSIS OF LAW WITH MACRO-PERSPECTIVE
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Crime is inevitable in any society, which occurs in and explained by the process of modernization to some sense. This paper analyzes the key relations between crime and modernization, based on the generalization of various factors that lead to crime. We attempt to create a new method on the research of Law & Economics with macro-perspective. Generalized from nearly all the factors leading to crime, Human Development Index(HDI)and Gini Coefficient are believed the most important two variables. We set up an HDI-Gini victim's matrix, and divide the countries in the world into four kinds according to HDI and Gini Coefficient level. Based on the two-way analysis of variance, we find that the severity of overall criminal situation are significantly influenced by the general level of the economic development and the social structure in a country, and the differences of them determine the criminal situation separately and interactively. In order to set up a short-run model, we expound two hypotheses and conclude that the economic growth speed negatively affects the crime rate while the income distribution gap positively. We carry on an empirical study using the historical crime rate data of China, S. Korea and U.S.A., and deny the prevalent hypotheses on the relations of crime and modernization. In the long run, the relationship between crime and modernization is likely Logistic
Curve. In initial stage of the modernization, the crime rate keeps steady, in fast developing period, the crime rate is close to rising sharply, and resume again being steady on later stage, namely "two stable states, one makes the transition". If the conclusion of this text is tenable, we should have a more sober understanding to China's present criminal situation. As a developing country, the growth of crime rate is a phenomenon difficult to avoid; it will keep this kind of trend during a very long period, but we can slow down the speed that the crime increases through the proper measures, and accelerate the process of transition, controlling the crime in the acceptable range to society. These measures include promoting the economic growth and reducing the gap between rich and poor. When China develops into the high human development level society, at the same time the social structure becomes harmonious again, crime rate can drop to a lower level.

THE COMPLEMENTARITY OBJECTION AGAINST THE INCLUSION OF LEGAL PERSONS IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT: EVOKING NATIONAL LEGAL DIFFERENCES AS AGUISE TO DEFER POLICY DEBATE

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During the Rome Conference debates towards an International Criminal Court, the possibility of extending the jurisdiction of the Court to include legal persons was mooted. By its final draft, the proposal was directed exclusively towards private corporations. Despite reasonable progress in achieving support for the proposal, the draft provisions were ultimately omitted. As a result the ICC currently has jurisdiction only over natural persons. One of the objections to emerge during debates on this issue was a concern with the impact such a development would have on complementarity. Although the word complementarity does not appear anywhere in the Rome Statue of the International Criminal Court, it is now a commonly used term to encapsulate the idea that the ICC is to operate as a complement to national criminal jurisdictions. In cases of concurrent jurisdiction, the ICC Statute preferences national jurisdictions over the ICC provided certain conditions are met. The concern regarding the proposal on legal persons was that to bring legal persons within the Court’s jurisdiction would have inappropriate repercussions on this complementary relationship between the ICC and national criminal jurisdictions, as those states that do not domestically recognise the criminal liability of legal persons would be automatically unable to assert their right to ‘first go’ at the investigation and prosecution of that class of potential defendants (the complementarity objection). The complementarity objection has been commonly repeated by commentators on the subject of the Rome debates on legal persons, but has not been subject to theoretical scrutiny. This paper scrutinises the claims contained within the complementarity objection; that current differences among the laws and legal cultures of domestic legal systems in relation to corporate criminal liability mean that an extension of ICC jurisdiction to include corporations would pervert or undermine the principle of a complementary court, or would render complementarity unworkable. After analysing the Rome Statute complementarity regime, as well as what is encompassed in the theoretical concept of complementarity, this paper concludes that the complementarity objection is simply a guise to defer debate on the policy issues at the heart of state positions regarding corporations and the ICC.

WHAT MAKES WRONGFUL DISCRIMINATION WRONG?

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Discrimination is a central topic of the Philosophy of Law and Social Philosophy. We want to fight against all kinds of arbitrary or morally wrong discrimination. Previously, we need to know what is an arbitrary or morally wrong discrimination. Usually, we think that a discrimination is morally wrong if it is based upon prejudices or biases, the incorrect judgments about the lesser moral worth. But this idea has two problems. First, a liberal society can not always recognize a discrimination based on prejudices as a morally wrong discrimination. And second, the discrimination based on biases hides the fact that some discriminations are not based on biases. So, to avoid both problems, we should define the morally wrong discrimination by their effects (effects on the equality of opportunity) on the victims rather by the reasons (biases or prejudices) of the discriminators.
THE TRIADE: GUARANTEEIST, POST-POSITIVISM AND FUNDAMENTAL RIGHTS - THE PERSPECTIVE OF “NEW” A LEGITIMATE AND EFFECTIVE CRIMINAL PROCEEDING

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The object of this study is to briefly systematize the main doctrinal understandings related to the theme in perspective, hereby making it clear that due to how broad the issue is, we have chosen to limit the approach as how the applicability of norms and their effectiveness in an attempt to demonstrate how constitutional principles and its variables guide Law as developed the multifunctionality, integrality and justiciability of the fundamental rights. Thus, the individualistic view of the guarantees of the Due Process of Law has been losing ground when confronted with the prevalence of a publicist insight. Thus, we must adjust the norms to the issues currently arising, making criminal proceedings compatible with the Democratic State of Law through the breaking of paradigms, strict formalities, and criminal proceedings in search of the so-called “fair process”. Finally, we aim to focus the constitutionalization phenomena and the return to ethical values, demanding a substantiated and interpreted judicial discourse, sustained in argumentation, in the search of a consensus, will seek fair solutions without leaving the judicial security aside.

LEGAL ETHICS IN PRACTICE - IN THE LIGHT OF ANKARA BAR’S ETHICS COMMITTEE EXPERIENCE

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This paper aims to discuss about conducts of the lawyers’ facing situations which may cause ethical problems or dilemmas during their practice. The paper also aims to discuss about effectiveness of the present and foresighted precautions or accepted practices which aims to lead the practitioners during their daily (routine) practice and at rare or uncertain conditions. As a result of the nature of the profession; lawyers face a lot of problems -including ethical ones- during their everyday practice. At our context “the nature of the profession” means the sui generis position of the lawyers, who are working under the rules of “free market”, but also as the founder part of the adjudication obliged to follow rigid rules. Lawyers are in a fundamental position to defend basic rights of the person; this position gives a responsibility to regard the balance between public and personal interest during the practice not only at the conflicts between state and person or during criminal procedure; but also at civil conflicts or actions. The paper aims to discuss all issues in the light of the Ankara Bar’s Ethics Committee experience, because the Ethics Committee is the first and the only ethics committee established in a Bar Organization in Turkey. Tough we believe there are some valuable results of this experience and clarifying the foundation process, working principles, study and working areas of the Committee will demonstrate the practice of legal ethics which may illuminate legal ethics studies.
WORKING GROUP 05 LEGAL ARGUMENTATION AND LEGAL LOGIC

APPROACHES TO LEGAL REASONING – DIFFERENCE OR UNITY
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Legal reasoning essentially focuses on two set of cases. Firstly, legal reasoning plays significant role in the process of application of law. Secondly, legal reasoning is concerned with justification of pertinence of some definite rule to the system of law in common level, regardless of concrete case. Existence of legal rules is in our way of legal thinking inseparably connected with a priori character of law. The essence of legal argumentation in the process of application of law is principally based on presumption of a priori existing and recognizable legal rules. Legal argumentation can be imagined as a certain way (method, process) by which the reasons (arguments) supporting applicability of chosen legal rules in decision making process on the whole, reasons for their use on considered factual state and eventually reasons supporting some definite content of these rules (i. e. findings of their normative content) are presented. The question is how to show arguments in favor of the chosen solution.

Legal theory deals with different theories of argumentation. These theories in fact are set of rules (mainly uninstitutionalized) which influence the result of application of law. If these rules are recognized by the one who judges correctness of the decision then it is probable that the solution would be considered correct. If there will be disagreement about these rules it can not be expected that the result of application of law will be agreed upon.

THE CONCEPT OF “RATIO DECIDENDI” AND THE SOURCES OF LAW: A SEMANTIC PROBLEM
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The concept of ratio decidendi plays a relevant role in legal argumentation, especially in common law. If one is to treat legal precedent as binding, one must presuppose a definition of ratio decidendi in order to determine what counts as a precedent and in what way a judge is bound by previous decisions. However, the criteria for determining the ratio remain in dispute. Given the premise of the binding character of single decisions and the positivistic assumption of irrelevance of judicial opinions in order to determine the holding of a case, common lawyers generally agree both on the thesis that the binding element of a judicial decision lies on its purely authoritative element and that for every legal decision it is possible to find one single ratio decidendi that couples the facts of the case with a definable set of juridical consequences in a rule-like form. Either a judicial rule is a ratio decidendi – and has absolute authority – or is an obiter dictum and has no authority at all (Eng). If we look more carefully at the concept of ratio decidendi we can observe that these two essentialist assumptions cannot be accepted any longer. On the one hand, the absolutely binding doctrine of precedent is not compatible with the exigency of justification upheld by democratic constitutions. On the other hand, the either/or assumption does not find empirical resonance in practice. When faced with the question “what is the ratio decidendi of a case?” a judge may find not necessarily one, but a number of different rules that can be used in legal argumentation, depending on the degree of generalization. Furthermore, the concept of ratio decidendi should be combined with a post-positivistic concept of “sources of law”: a source is “every reason that can be used as a justificatory basis of the (legal) interpretation” (Aarnio). If this argumentative conception is accepted, there can be different degrees of bindingness of the materials that jurists may use in the justification of their decisions, depending on the rational acceptability of these materials. As for the ratio decidendi, we can for the moment conclude that the more abstract the rule derived from case A is, the bigger the number of cases it covers, but the smaller the degree of its bindingness is when it comes to deciding case B.

ABDUCTIVE REASONING AND CREATIVITY IN LAW: THE CONTRIBUTION OF PEIRCE’S PRAGMATISM PHILOSOPHY
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The tradition of legal reasoning, grounded on legal formalism and conceptualisms does not explore the creativity component of law. For formalists, judicial decisions are the outcome of deduction process. Pragmatism Philosophy appears in this context as an alternative to review legal theories under a new platform of reasoning – the abduction, which can effectively leads us to new discovery and new ideas. We analyze the deficiencies of the traditional legal methodology and present pragmatic adjudication as an alternative way to improve law, through the abductive reasoning, developed by Charles Sanders Peirce. A bibliographical revision of the classical Pragmatism within its main exponents – C. S. Peirce, W. James and J. Dewey – is done and a possibility of a legal methodology based on abduction is discussed. Taking Peirce’s Pragmatism into consideration, the cartesian tradition in law is criticized. Pragmatism emphasizes on consequences and rejects essentialisms. Formal assumptions lead to auto-illusion and unreal doubts, without any link to the sensible elements of the world. Therein resides the advantage of the pragmatic method based on abduction. For Peirce the whole meaning of any idea is to be found in considering what effects that might conceivably have practical bearings, we conceive the object of our conception to have. Peirce’s abductive reasoning infers the known from what is unknown, from effects to cause. Abduction is the first step of scientific inquiries and of any interpretative processes. The originality and creativity begins in abduction, it does not end there. It presents a hypothesis that may be. Whereas abduction is free to introduce new ideas, induction must develop what is already known. Continuity has also a methodological importance in Pragmatism. Concepts are not definitive, but always dynamic, open to changes and evolution. The notion of the “practical” in Peirce embodies the possible consequences of our conceptions – a notion that hinges on imagination rather than rationalization. Thus, the pragmatism reasoning is an imaginative and collaborative semiotics of consequences. As abduction involves not only logic but also psychology, the imagination and creativity take place in legal reasoning. For Peirce abduction reasoning is both an insight and an inference. The abductive inference has a lot to contribute on legal adjudication, especially on the context of discovery emphasizing the creativity as the first step of legal reasoning.

ABDUCTION IN LEGAL REASONING ABOUT EVIDENCE: SOME INTERPRETATIONS

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In this paper I present some possible interpretations of abduction in the context of legal evidence reasoning. In this context abduction presents adequate the relation between facts, evidence and hypothesis. It is also useful in legal reasoning about evidence because represents a nondeductive mode of reasoning. In the abductive scheme we generate and evaluate hypotheses, which explain legal facts on the base of evidence. In my opinion there are two main interpretations of abduction: logical and probabilistic interpretation. I argue that in legal evidence reasoning abduction should be understood in terms of probability. Then I present some possible languages of probability for abduction: the Bayesian language and the language of constructive probability. These languages give us also the answer the question: “what are probabilities?” Also this paper makes use of the concept of abduction in the light of Ch. S. Peirce’s philosophy with some interpretations on the ground of research in Artificial Intelligence. These two points of view on abduction are useful to generate a coherent theory of abduction and give us some important arguments to interpret abduction in the light of probability. For example John Josephson argues that plausibility of hypotheses, which is connected with abductive reasoning, can be successfully and advantageously formalized, perhaps by linking to likelihoods, and thence to probabilities, and perhaps thence to some known semantics for probabilities, such as frequencies or causal propensities.

WHEN PICTURES ENTER THE PICTURE - ABOUT PICTURES AS EVIDENCE

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During a trial the advocate may want to put more power into her/his argument by showing graphic pictures of the victim or graphical schemata of a future development project say of a planned housing area. How reliable are the pictures and sketches? In order to present a witness in a trial the advocate has to lay the foundation for this witness, that he has seen, heard, experienced what happened. The eye witness could be seen as the court’s eye and ear on the scene. An expert in turn has to own the expertise in the field s/he is to express an opinion about. Assume that the witness has taken a picture of the whole happening. Would it not be tempting to think that one with this “additional evidence” could reinforce the argument., “Not alone was s/he at the spot, s/he took a picture!” When can a lawyer rely on a picture in the argumentation? The question about evidence becomes important. What is evidence? What is acceptable as evidence? Briefly, evidence is what the court accepts as
evidence. Testimony, expert opinion and physical evidence typically are parts of a legal argumentation. We expect a witness to tell the truth but we all know that witnesses lie. In fact the same can be said about expert witnesses as well. If, as in American trials, it were a matter of one party’s hired expert, then some skepticism could be in place. How about sketches, tables and other pictures? Indeed, how does the picture enter the picture? Should we not analyze the material before we choose which pictures could be acceptable in the argument? In saying that a testimony is partly true we indicate that certain statements, but not all are true. One could think that pictures function in the same way. A picture can say more than a thousand words, but if it is a misrepresentation of the fact then it may be compared with an unreliable witness. In the argumentation incomplete pictures have to be measured with the same measure as are unreliable witnesses. Misrepresentations need to be excluded from the deduction process. We will employ the Interrogative Model (IM) for truth seeking in science, also for legal argumentation. The technique of “bracketing” becomes useful when dealing with those unreliable pictures and witnesses.

ON THE “PROBLEM OF TRUTH” IN EVIDENCE

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In the field of Evidence, the tension between the necessity of truth for law’s legitimacy and Justice and the difficulty of establishing truth is dealt with by two different traditions, the rationalist and the sceptic. This paper deals with the ways by which the Law of Evidence itself responds to the above mentioned tension and focuses upon the theories of truth, the modes of reasoning and the methods adopted by the judge.

THE DISTINCTION BETWEEN RULES AND PRINCIPLES VS. THEORY OF STEREOTYPES

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The principal question in the paper is this: What is the concept of meaning behind the distinction between rules and principles? My thesis is that the Hilary Putnam theory of stereotypes is one way to respond about the nature of that distinction. In [Putman, 99] he evaluated two main assumptions of traditional theory of meaning: 1. Knowing the meaning of a term is just a matter of being in a certain psychological state. 2. The meaning of a term (its sense or intension) determines its reference or extension. His main argument was: these two assumptions are not jointly satisfied by ANY notion of meaning. His proposal is the theory of stereotypes. In this document we compare principles or rules with stereotypes to demonstrate the difficulty to apply the traditional theory of meaning in this fundamental issue.

CARVING OUT SPEECH ACTS

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Where does the binding force of speech acts come from?” “How is it that words are able to bring about changes in social reality?” The contribution is to face the questions regarding the nature and origin of speech acts. We start from the claim that speech acts do not belong to nature sensu stricto, instead, they belong to “second nature”. The second nature is artificial, as it is created by man. The way of creation is convention: human consent in the (wishful) order of things. However, “artificial” does not mean “virtual”: the second nature is real from top to toe. Its reality means that speech acts (linguistic or symbolic manifestations) are connected with consequences with the tool of obligations taken by pieces of promise. This line of quasi causality was introduced, enforced and is institutionalized day after day by law. The contribution tries to grasp the ancient roots and basic steps of the process in the course of which operative speech acts were carved out (i.e. invented, established and institutionalized) by series of procedures of law.

CONCEPTS, CONCEPTIONS AND EXTENSIONAL LOOSENESS

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It is distinctive of some terms that they can be systematically applied to different objects and kinds of objects by equally informed speakers not using the term with different meanings. Such terms express concepts that allow for several conceptions.
Hare (1952) used this semantic peculiarity as an argument against the descriptive view of moral terms such as “good”. Gallie (1956) argued for the possibility and usefulness of this kind of concepts and claimed that some of them are “essentially contested”. Hart (1961), Rawls (1971) and Dworkin (1972, 1977, 1986) made famous the distinction between concepts and conceptions, and Dworkin called these terms that admit several conceptions “interpretive concepts”. The Scandinavian legal philosophy discussion on “intermediate concepts” such as “property”, notoriously debated by Ross (1957), concerned a basically identical problem. Horgan and Timmons’ (1992) Moral Twin Earth argument against moral naturalism relied on the same semantic feature, concluding that “there just do not exist enough semantic constraints on moral terms and concepts for these constraints, together with objective nonmoral facts, to determinately fix the extensions (at a possible world) of moral terms and concepts”. Indeed, rule- or value-dependent terms and concepts – in short, “normative concepts” – such as most legal, political, moral, aesthetical, semantic or luxory concepts do not determinately fix their extensions; they are “extensionally loose”. I will argue that while this is a semantic peculiarity, it is also apparent, precisely in that most competent speakers would accept that the application of such concepts “depends on” “rules”, “norms”, “values”, “criteria”, “ideals”, “standards” or something like that. Being apparent, it is unlikely that extensional looseness can be properly characterized as a deficiency of a term. I shall argue that extensional looseness (a) is no argument for the non-descriptiveness of a term, that (b) it does not imply that only very abstract definitions of such terms are possible and that (c) it also does not imply that the practices of using these concepts include the consciousness that those practices have a “purpose” or a “point”. Focusing on law, I will finally argue that extensional looseness implies that no fundamental legal concept, such as “legally obligatory”, can be defined on the basis of the “operative facts” for its application, but only on its so called “legal consequences”.

ON FORMAL NOTATION OF THE TELEOLOGICAL STRUCTURE OF LAW

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There are different methodical paradigms of law and AI (T. Bench-Capon, W. Bibel, J. Breuker, C. Hafner & H. Berman, G. Sartor etc.). One direction is via natural language, another via formal notation. This contribution focuses the approach of a special notation. Legal order as a societal instrument is characterized by many implicit and rare explicit teleological structures. Teleology concerns not only in the single norm but also in the whole legal architecture. An early attempt to analyze legal teleological structures was done by the “Interessenjurisprudenz” (R. von Jhering), but nowadays the recent challenge of eGovernment (R. Traunmueller, M. Wimmer) needs a new concept of legal teleology. The teleological structure we propose contains three elements: first, the basic element A, second, the target-element B, and, third, the teleological relation te→. The proposed notation is A te→ B. Within a legal taxonomy there are different semantic kinds of legal teleology, depending on the different teleological order like the time horizon, e.g. A te_short_term→ B, A te_medium_term→ B or A te_long_term→ B. From a pragmatical point of view the teleological structure is embedded within a speech act. It is necessary to represent the speech act by a separate notation, too, e.g. TE-Statement (...). Also the speech acts can be qualified in different ways: TE-Statement_legal (A te→ B), TE-Statement_political (A te→ B) or TE-Statement_scientific (A te→ B). Thus the notation can lead to a “theory of relations” in law. To illustrate the notation, consider the three statements: (1) ‘A goal G is achieved by a legal act A1’, (2) ‘A goal G is achieved by a legal act A2’, and (3) ‘A legal act A1 implies less quantitative restrictions (QR) than A2’. Then the meaning of these statements can be represented: A1 te→ G, A2 te→ G, A1 QR< A2. Teleological statements are especially found in the legislative workflow (from governmental drafting via parliamentarian decisions towards publication of the valid laws). The formal notation can contribute to textual analysis (both human and electronic) as well in legal drafting processes and in the interpretation of valid laws.

CONDITIONAL IMPERATIVES AND DYADIC DEONTIC LOGIC: SOME PROBLEMS AND SOLUTIONS

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Conditional imperatives, such as “if it is cloudy, take an umbrella with you”, tie a descriptive antecedent to a consequent in the imperative mood. When such conditional imperative sentences are used to establish a norm governing a subject’s behavior, a description of the obligations that arise for the subject from such norms depends on the circumstances that act as triggers of the actual obligations: e.g. given the above imperative it is true that the subject ought to take an umbrella if it is cloudy. The
language of dyadic deontic logic, developed over 50 years ago by G. H. von Wright, allows us to formalize such conditional obligations. But while dyadic deontic logic avoids the pitfalls of descriptions of such obligations by standard deontic logic and material conditionals, not all of its theorems seem adequate if dyadic deontic logic is to relate to conditional imperatives. One such theorem is \( O(q/p) \land N\neg q \rightarrow O\neg p \), i.e. if one ought to do \( q \) given \( p \), and \( q \) has become impossible, one has to see to it that \( \neg p \) obtains – but the speaker surely did not mean to imply that if I cannot take my umbrella (I cannot find it), then I ought to see to it that it does not rain. Furthermore, a number of questions arise when dyadic deontic logic is used to describe obligations that arise from conditional imperatives: is deontic detachment valid, that proceeds from \( O(q/p) \) and \( O(r/q) \) to \( O(r/p) \)? is reasoning by alternatives permitted that proceeds from \( O(r/p) \) and \( O(r/q) \) to \( O(r/pvq) \)? when should a set of conditional norms be viewed as consistent, and how do we proceed when circumstances oppose the satisfaction of all obligations triggered by them? The paper presents a semantic account of the relation between conditional imperatives and dyadic deontic logic and discusses the questions that arise for such a logic.

Logo of Norms and Algebra of the Natural Law as Complementary Explications of the Unity of Juridical and Aristotelian Modalities

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Leibniz discovered the unity of juridical and Aristotelian modalities. Explicating this discovery by the logic of norms Wright decided that this unity is not equivalence but analogy. However a complement for Wright’s explication was submitted. It was two-valued natural-law algebra, representing juridical and Aristotelian modalities as moral-legal evaluation-functions determined by one variable. Below I generalise this unary complement by treating the modalities as moral-legal evaluation-functions determined by two variables. Let symbols \( a \) and \( b \) stand for such things (activities or persons or states of affairs) which are either “good” or “evil (bad)”. Symbols \( g \) and \( e \) stand for moral-legal values “good” and “evil (bad)” respectively. Thus \( a \) and \( b \) take their values from the set \{ \( g, e \) \}. Algebra of the natural law studies moral-legal evaluation functions. They take their values also from the set \{ \( g, e \) \}. In the natural law algebra the symbol \( Oab \) stands for the unary moral-legal operation “making \( b \) obligatory for \( a \)”. \( Pab \) – “permitting \( b \) for \( a \)”. \( Fab \) – “forbidding \( b \) for \( a \)”. \( Yab \) – “making \( b \) facultative for \( a \)”. \( Iab \) – “making \( b \) normatively indifferent for \( a \)”. \( Lab \) – “making \( b \) necessary for \( a \)”. \( Mab \) – “making \( b \) possible for \( a \)”. \( Sab \) – “making \( b \) impossible for \( a \)”. \( Uab \) – “making \( b \) avoidable (not-necessary) for \( a \)”. \( Cab \) – “making \( b \) accidental for \( a \)”. The moral-legal evaluation-functional sense of these operations is defined by means of the following tables.

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In the natural-law algebra moral-legal forms \( a \) and \( b \) are called formally-axiologically equivalent (\( a=++=b \)) if and only if \( a \) and \( b \) acquire identical moral-legal values under any possible combination of moral-legal values of the variables occurring in \( a \) and \( b \). Using the above definitions gives the following equations. \( Oab=++=Lab \): obligatory is equivalent to necessary. \( Pab=++=Mab \): permitted is equivalent to possible. \( Fab=++=Sab \): forbidden is equivalent to impossible. \( Yab=++=Uab \): facultative is equivalent to avoidable. \( Iab=++=Cab \): indifferent is equivalent to accidental. These equations represent Leibniz’ text more literally than Wright’s explication because Leibniz wrote about not an analogy but an equivalence between the modalities.
ARTIFICIAL INTELLIGENCE AND NATURAL LAW

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Constructors of expert systems try to use the deontic logic for legal knowledge representation. This approach is a well-known and respectable one. However for the sake of effectiveness there should be a competition of substantially different theories underlying the process of inventing artificial normative systems. In the present paper a substantially new alternative for the deontic logic (i.e. for modal logic of norms) is submitted and elaborated. This alternative is algebra of moral-legal actions – a hitherto unknown mathematical (evaluation-functional) simulation of the natural law system. The natural law dealing with evaluative notions “good” and “bad” is a significant part of law. The deontic logic approach is not an adequate tool for evaluative moral-legal knowledge representation. Expert systems supporting the process of making laws must be able to compare the normative systems with the corresponding evaluative ones belonging to the natural law. This testing the positive law by the corresponding natural one requires an adequate representation of the natural law knowledge in intelligent legal systems. The given paper submits an original variant of doing this. The mentioned alternative for the deontic logic is not normative but evaluative (namely, evaluation-functional) one. How could an evaluative attitude compete with the normative one in constructing artificial normative systems? The paper gives an answer for this question by virtue of submitting an algebraic representation of the old legal philosophy idea of the natural law. According to the traditional definition, the natural law is a universal and eternal moral-legal value (evaluation) system. According to another traditional definition, the natural law is an abstract general theory of the good (and evil). Notions “good” and “bad (evil)” are evaluative ones. Hence the natural law doctrine is an evaluative theory of moral-legal actions. Algebra of the natural law is such a formal representation of legal knowledge, which deals with formal moral-legal evaluations of actions of humans and artificial agents. As contents of the positive law and morals are essentially relative and undergo permanent historical change, the natural law is a formal one. The absoluteness (universality and immutability) of the natural law is explained by its formalness. To formulate and study the natural law as a system one must accept the abstraction from the relativity and flexibility of contents of the positive law and morals. Given the abstraction is accepted the relativity and flexibility of contents of the positive moral-legal evaluations is not a problem.

A ‘CLASSICAL’ VIEW ON LAW AND INFORMATION TECHNOLOGIES

Federico Puppo

The paper, carrying out a brief study of some theories in the field of law and information technologies, pursues the following aims: a) to outline some relevant aspects of law and information technologies, regarding particularly those theories which tend to replace judicial discretion with a computer model (a topos probably overestimated – as denounced by some scholars – but still alive). In this first part of the paper, my intention is to outline two relevant aspects of such theories: the concept of law (essentially interpreted as mere voluntas – “will” – according to the positivist account of law) and the consequent structure of legal reasoning (commonly interpreted as a practical syllogism) involved by them. In this way, it will be possible to put in evidence what these theories mean by “application of law” (i.e. an algorithmic model, dominated by the dream of constructing an automatic judge). b) to showing some limits of the theories before from a theoretical and logical point of view. In this point my intention is to propose a different conception of law and information technologies, based on a «classical» perspective about law. According to such conception the fulcrum of law is not the statute (written) law but the controversial contest in which trials and lawsuits take place. The current misunderstanding of law’s main character – the controversial one – has reduced it to a mere fact exposed to subjective will’s disposal. An idea which is coherently reflected in some accounts on law and information technologies. On the contrary, by remembering another conception of law (defined as «classical»), it would be possible to rediscover a way to speak about truth in the field of rhetoric and judicial argumentation – requested by a controversial contest – different from the formalistic one, so coming to dispel the opinions according to which, in such contest, we cannot retain the presence of truth. Conclusively, the paper considers the possibility of connecting the issues about law and information technologies to the classical method of rhetoric in legal argumentation.
WORKING GROUP 06 APPLICATION OF LAW

FORMAL PRINCIPLES AS THE FINAL SOLUTION TO THE SEPARATION OF POWERS BETWEEN CONSTITUTIONAL COURT AND LEGISLATORS? - A CRITICAL ANALYSIS OF ALEXY’S THEORY OF PRINCIPLES
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This essay purports to critically examine the convincibility of Robert Alexy’s theory of formal principles. While formal principle, according to Alexy, aims at resolving the counter-majoritarian or counter-democratic difficulty of the Federal Constitutional Court of Germany, it misjudges the core of the problem and to this extent fails to clarify how exactly the power of the Constitutional Court is ought to be restrained. Against the background of the civil-law tradition which separates judicial law application from legislative law making in a distinctive way, I argue that, also in light of Alexy’s theory of principles, the key point to the separation of powers between Constitutional Court and legislators lies not in formal principles, but rather in rationality of the Constitutional Court’s legal reasoning. More concretely, while the balancing power of the Constitutional Court is widely criticized due to its subjective and arbitrary character, it is often neglected that, since motivation is to be distinguished from argumentation, an irrational way of thinking does not suggest an irrational way of judicial reasoning. In other words, the rationality of judicial reasoning need not be premised upon the rationality of judicial motivation. Understood this way, the key point to the guarantee of the legislative power of discretion on one hand and the limitation of the Constitutional Court’s power of balancing on the other hand should not lie in the motivation-oriented and thus constitutionally controversial formal principles, but rather in the dogmatic requirement that the Constitutional Court must be able to prove the rationality of its reasoning, which needs only to be justified through the applied constitutional norm not as the real start point of the judicial subsumption, but no more and no less than as an underline for the Court’s balancing.

THE PARADOX OF CONSTITUTIONAL REFORM
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I try to analyse Ross Paradox on Constitutional Reform, which he presents as follows: Art. 88 of the Constitution of Denmark establishes the conditions for constitutional reform. This norm is the only legal means to reform the Constitution; that is to reform any constitutional norm, including art. 88. Therefore, it is the only legal means to reform the legal procedure for the reform of any constitutional norm, including art. 88, which demonstrates its self-referring character.

IS JUDICIAL INTEGRITY A NORM? JUDICIAL INTEGRITY AND THE APPLICATION OF LAW
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Much effort is made to safeguard judicial integrity - but what is it? In this presentation, two discourses on judicial integrity are sketched: one in which judicial integrity is said to be at stake and one in which the emphasis lies on safeguarding judicial integrity. These discourses are by no means homogeneous. Within European discourses, there are also differences within each discourse regarding the use and meaning of integrity. In order to gain a better understanding of the concept, normative theory is consulted. From a rule of law perspective, integrity as the right professional character of an official appears to be a presupposed norm. From the perspective of democracy, integrity appears as the norm that correlates to public trust. By expounding on these norms – integrity as professional character and integrity as external accountability – it is possible to come to a better understanding of the discourses on judicial integrity. I shall pay specific attention to the theme of integrity in the application of law.
WHY COURTS SHOULD NOT ‘BALANCE’ RIGHTS AGAINST THE PUBLIC INTEREST

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A traditional view about legal reasoning is that it is a distinctive form of reasoning which is confined to a limited set of characteristic arguments. On this view, legal reasoning is in important respects constrained, by comparison with ordinary moral or political reasoning which responds to the full range of moral and political considerations. This paper brings the traditional view of legal reasoning to bear on the problem of how judges should resolve conflicts between rights and the public interest. In terms of one popular method for resolving such conflicts, courts should ‘balance’ the competing values. On this approach, though rights are undoubtedly interests of a particularly weighty kind, they can nevertheless be measured and weighed on the same scale as other interests. After having taken due account of the weight of the interests protected by rights, courts should therefore investigate whether, on balance, their infringement is justified. This paper challenges the balancing model by arguing that its willingness as a matter of course to weigh rights against the policy reasons for restricting them is incompatible with the distinctive nature of legal reasoning. Drawing on Stephen Perry’s analysis of the possible modes of practical reason, I propose an alternative view of rights on which they have at least a partial ability to block consideration of the policy arguments which justify infringing them: the existence of a right is a reason for assigning less weight to the reasons that compete with it than those reasons would ordinarily have. The paper argues that this view is able to explain our belief that courts are under an obligation to articulate the values of ‘law’ as opposed to ‘politics’. By contrast, on the balancing model, courts play an illegitimately legislative role.

THE SCALE’S AND JUSTICE: MUTUALLY EXCLUSIVE? (IN)COMMENSURABILITY AND THE ACKNOWLEDGMENT OF TRAGIC CHOICE IN JUDICIAL REASONING

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Influential conceptions of public deliberation like means-ends reasoning and rule-case reasoning, leave no room for the acknowledgement of tragic choices. These conceptions are therefore sometimes rejected as undesirable; they give the agent erroneously ‘good news’ about the world, a false sense of ‘security’ against “the torment of thinking, feeling and understanding that can actually be involved in practical deliberation.” Value commensurability, one of the characteristics of these criticized methods of public deliberation, is held responsible for this neglect of tragic choice. The idea is, roughly, that public deliberation on the basis of a ‘prior ‘commensurans’, a common currency, cannot acknowledge and incorporate tragic choice. It provides no option by which agents can deal with the residues of public choice. Neo-Aristotelian conceptions of public deliberation not relying on ‘value commensurability’ have been put forward as alternatives. Examples of these proposals are Nussbaum’s conception of public deliberation and Richardson’s idea of specifying ends. Wiggins and Finnis also give a positive account of public deliberation without depending on value commensurability. The aforementioned critique on value-commensurability and the proposed neo-Aristotelian methods rely on important assumptions that will be scrutinized more closely in this paper. These assumptions are firstly, the necessary relation between ‘commensurability’ and the neglect of ‘tragic choice’. Secondly, in the proposed alternatives the assumption is that ‘commensurability’ is not a necessary condition for public deliberation; the neo-Aristotelian conceptions of public deliberation, are not put forward as ‘intuitionist’ nor as rationalizations of actual expressions of power relations, but as methods of rational deliberation which justify the outcome of public choice. These assumptions will be examined indirectly by addressing the question whether public deliberation should acknowledge the possibility of tragic choice, thereby necessarily rejecting value-commensurability as its justificatory ground. The question will be applied to judicial reasoning as an example ‘par excellence’ of public deliberation. This application urges us to think about the institutional implications of a conception of legal reasoning not depending on value-commensurability and incorporating ‘tragic choice’. For example, it is possible that other characteristics of the Rule of Law make the implementation of this conception problematic. As a consequence, the analysis might prove usual conceptions of (adjudication in) the Rule of Law wanting.
JURIDICAL ARGUMENTATION THEORY - ANALYSE AND CRITICISM TO THE CONCRECT CASE - PRINCIPLES OF PROPORCIONALITY AND REASONABILITY
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This article analyzes that the best option for the law operators is the interpretation of the law, being this the biggest obstacle for the lawyers or public prosecution service to guarantee the interest of its client and the society, respective. The judge, in the better adequate objectiving a purpose for de correction for satisfaction of the judicial tutelage. Emphasize how the new trend is to give force for the principles like fontain (source) interpretative unleash debates in the age positivist about prism to get justice, always considerate the transcend to the positivist interpretation which content intent to establish in this study, principal in the conflicts between institutes: rules and principles. Finally, we aim to focus how the Alexy’s Juridical theory of the argument as being the instrument to get our research.

REPRESENTATIONAL AUTHORITY AND THE CHARACTER OF LEGAL AUTHORITY
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The paper is an exercise in conceptual legal theory. By presenting it, I seek to contribute to the clarification of one of the key conceptual features of law: its distinctive normativity. I follow a standard way of accounting for the distinctive normativity of law: I assume that the law creates authority relations (or, at least, it makes authority claims over its subject), and the conceptual clarification of law should heavily rely on a theory of authority. I argue that Raz’s theory of authority is a sound basis for clarifying the conceptual character of legal authority. That conviction implies (1) attributing to law claims of practical (as opposed to theoretical) authority, (2) assuming the decisional model of authority, and (3) insisting that authority relations are always relations of rational human beings: they always have a ‘personal’ element. In the paper I concentrate on the third point, and try to meet the challenge put up by the argument that we should give up the ‘personification’ of legal authority. Exercising legal authority is rarely based on some close, direct personal relationship between officials and citizens. Legal authority is often exercised by people who have no substantial personal knowledge of those subjected to their authoritative competence. If we are to attribute authority to the law, it must be somehow impersonal. I subscribe to the view that we have a strong conceptual reason for insisting that legal authority must have a personal element. The (relative) ‘content-independence’ of legal directives presupposes a sort of personification of legal authority: one can hardly attribute content-independent normative force to impersonal mechanisms (Raz). I explore the possibility of reconciling the conflicting considerations by distinguishing a strong and a weak sense of the personification of authority, and arguing that legal authority is personal only in a relatively weak sense. The conceptual point I make is based on the idea that legal officials do not stand for themselves in the authority relation: they are ‘representatives’ — their authority is ‘representational authority’. Their decisions should be seen as views of persons on how others should behave but the normativity of those decisions stems from the officials’ institutional role as opposed to their personal qualities. I argue that understanding legal authority as representational authority bears heavily on matters of legal interpretation, and leads to issues that connect conceptual legal theory to substantive political philosophy (like the issue of sovereignty).

THE PROCESS OF CONSTITUTIONALIZATION OF LAW
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This paper researches the process of constitutionalization of Law, and the hermeneutical meaning of the affirmation of normative value of constitutional principles, in the post-positivist horizon. It shows that constitutional principles command every experience of Law, requiring a new hermeneutical paradigm. We can’t use the old models of Positivism anymore. This task requires considering Law as an example of practical reasoning, and invites to consider the paradigmatic importance of Rhetoric for Law, in its special orientation to the case and not to the system, in a quite different perspective than that of Positivism (who
claims for a syllogistic paradigm for Law). It also remarks on the importance of the paradigmatic reconstruction of Law in the context of the construction of Brazilian constitutional and democratic state of law.

THE LEGAL ARGUMENT

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The challenge of the legal hermeneutics if also imposes because the process of affirmation and construction of legal principles interacts with the process of installation and construction of ethical values, in the context, however, of a pluralist society. The search of the consensus and the agreement is the “telos” of all thought that if assumes as rational. The legal reasoning that appeals the principles is in last analysis mentioning itself it values (which are not thought here as subsistent beings about itself, but in its historical and permanent reconstitution, of that the experience of the right participates), and if it makes it rationally, it must make having it as it guides the search of the agreement. But as to understand concerning values in a pluralist society, marked for the difference, the diversity, the multiplicity of certainties concerning what it is the happiness or the personal success, about at last in the ways as if must live? In this context, the contribution must be recognized, for example, of the Theory of the Argument, Chaim Perelman, in the process of pragmatic reconstruction of the right and in the construction what it has been called after-positivist because it confers a new critical perspective to the legal speech from good based to the dominant conceptions, and giving priority for the logic of the reasonable one, for the argument and deliberation, to the right as practical thought. But the retaken one of the right as practical thought, rhetorical-argument shade, with abandonment, therefore, of the epistêmico paradigm (proper of the mathematics that in the right reduces the thought to the silogism) allows to face the challenge to decide a case before which if they impose two different principles normative. It is important to emphasize that one is not about a bonanza situation, but of something absolutely characteristic of a Democratic State of Law.
COMPARATIVE JURISPRUDENCE: THEORY AND PRACTICE

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In this age of “globalization”, the knowledge from comparative view is inevitably necessary. Jurisprudence as a cultural philosophy of law also needs comparative perspectives. Arthur Kaufmann (Munich) argues that contemporary jurisprudence should be a Vergleichende Rechtsphilosophie or even Rechtsphilosophie auf der Reise. The name of “comparative law” has been more frequently used than “comparative jurisprudence”. Comparative law pursues the institutional, factual, historical comparison of law. I believe philosophical values and theories also must be compared in the pluralistic legal communities of the world. If we analyze the main textbooks of jurisprudence in the Western world, we find the growing interest toward comparative jurisprudence. William Twining’s Globalization and Legal Theory (North Western University Press, 2000) is a good example. His concept of ‘general jurisprudence’ deserves a serious discussion. He argues; Globalization does not minimize the importance of the local, but it does not mandate setting the study of local issues and phenomena in broad geographical and historical contexts. For most legal scholars the maxim should be: ‘Think global, focus local’. Comparison is a crucial step on the way to generalization. Conversely, rethinking comparative law from a global perspective will involve all the standard tasks of legal theorizing. My presentation will survey such a trend in the Western jurisprudence and witness my personal experience of teaching this course of “Comparative Jurisprudence” in the US law schools and in my homeland Korea. How should be the contents of the course of comparative jurisprudence and how to teach it practically is what I want to share with our jurisprudential colleagues.

TOWARDS AN AUTONOMOUS LEGAL POLICY

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From the point of view of its purport, means and mechanism of functioning, legal policy is politics insofar as it is aimed at political pressure by recour sing to non formal(ised) means. At the same time, it is law from the point of view of the targeted medium upon which influence gets exerted, taken as a filter that lets only through (by selecting) given kinds of influence. Or, legal policy affords a specific intermediary in transition of politics to law and vice versa, bearing the distinctive features of both. From this derives that legal policy is practical a category with the ultimate criterion of effectiveness. In consequence, the impact of such theoretical qualities as selection based upon cognition and evaluation can only surface in the long run, through the law’s practical efficacy. Within such scheme, (1) the task of scholarship is to disclose developmental regularities of and correlations amongst relevant phenomena as components of reality. Instead of performing evaluation per se, it presents feasible historical alternatives with all their consequences. It processes evaluations, goal-settings and ideologies as objectively emerging components of societal existence. (2) Legal policy performs own evaluation, goal-setting and/or ideologisation in terms of politics but through its own scholarly analysis. Its fundamental task is to help the practical realisation of what is in principle feasible and available, or at least to transform the very idea of implementation into a practically recognised task. (3) The law on law reformulates in the normative language of a general legal enactment that what legal policy has already formulated, in case the issue at hand withstands specific regulation. In the field (A) of law-making, this triple task is designed to (a) the science of law-making as an area of jurisprudence dedicated to the clarification of the philosophical, theoretical and sociological foundations of legislation; to (b) law-making policy as a field of legal policy concerned with the selection of values, considered hic et nunc desirable as drawn from the data of Gesetzgebunglehre; and to (c) the act on law-making as a positive enactment on what, through which procedures and with what formal requirements law can be issued. In principle, on the field (B) of law-application we can similarly distinguish (a) the science of law-application, (b) law-applying policy and (c) the act on law-application.
ON INTERDISCIPLINARY APPROACH IN LEGAL METHODOLOGY
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My paper aims at pinpointing a few reflections on the methodological approach used by jurists – which I have termed their methodological attitude – in legal knowledge and act. The modern times and, especially, our age, with its particular features (the acceleration of history, the complexity of social life, the social, scientific, technological revolutions, the global problems, the ambivalence of mankind’s future) demand Law to reappropriate methodology in order to surpass its current crisis. Today Law has to normatively cope with the increasing crisis, conflict, relativity etc. that turn into real agents that put ‘pressure’ on it. In this context, it has become clearer than ever that Law is a ‘closed’ system through its juridical feature (H.L.H. Hart) but in fact juridicalness is ‘porous’; that Law is ‘cognitively open’ (from the methodological viewpoint as well); and the conjugation of perspectives and the cultivation of inter-disciplinarity have become inevitable facts. Others have advocated the idea that Law is now obliged to abandon the illusions of Modernity; the illusion of the continuous and programmed progress, of the ideologies that present Law as a closed and autonomous system. Law is obliged to assume its self-contradictory, dialectical nature: although it is created, it also creates its creators. It is closed (through juridicalness) but also open (due to its gives and other subsystems); autonomous (self-regulating) but also compelled (from the outside); organized and organizing; coherent (hic et nunc) and self-contradictory (among subsystems), homogeneous (through its specificity) and discontinuous (porous, permeable); informed but also informing; material but also ideal (as value), etc. In this context, given its internal and external reasons, legal methodology cannot afford neglecting the plurality of ‘methodological centres’ advocated today by philosophy and science, the methodological transfer, borrowing, and integration in the approach to Law as an ever more complex reality, without renouncing its specificity. In sharing this view, we consider that the multi-, inter-, and trans-disciplinarian approach must be more than mentioning connection and inter-dependence. It must penetrate by attracting to the legal field ‘exemplary elaborations’ from philosophy, epistemology, sociology, logic, etc., which, in fact, are its very own constituents at various levels. And if I may conjure a single example, that would be Habermas’ communication model. The aforementioned appeal addresses, above all, the traditional jurist, who is truthful to legal dogma and too reticent about such an approach.

RULE OF LAW AND LEGAL CULTURE
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Rule of law is an open value laden and controversial notion. It has its core meaning and semantic penumbra. The core meaning of this term refers to political systems in which public authorities are acting in the frame of law and in virtue of law. No persons, institutions or agencies are situated above the law. This is the paradigm of the rule of law. The concept of the rule of law does not follow logically from the notion of law and is not tantamount to the concept of legal order. A legal order which is not based on the principle of the rule of law still can be qualified as the legal order. J.Raz gives a precise and synthetic formulation of the paradigmatic meaning of the rule of law. “The rule of law finds its core idea as principled faithful application of the law. Its major features are its insistence on an open public administration of justice, with reasoned decisions by an independent judiciary based on publicly promulgated, prospective, principled legislation.” These are the minimal requirements of the rule of law. In XX century the higher elevated standards of the rule of law based on the idea of human rights have been developed in international treaties and in domestic constitutions. The minimal requirements of the rule of law can be fulfilled in all economic and political systems with the exception of totalitarian systems. The elevated requirements of the rule of law can meet only democratic political systems, respecting the standards of human rights. The main object of my consideration are the relations between the the rule of law and the culture of society particularly legal culture. Legal culture forms the intrinsic features of legal systems, of law in action and of the dominating social attitudes to law. The idea of the rule of law is the outcome of the historical development of European legal culture. European culture is a legalistic culture. It is a culture, in which law has a high social prestige and is acknowledged as a normative order having high moral value. By European legal culture, I mean the culture originated in Europe. So this notion covers also the legal culture of U.S.A, Canada, Australia and the legal culture of the countries of Latin America. Legalistic cultures are also Israeli culture and Islamic culture. But European legalistic culture exhibits some special and unique features. To these features belong the concept of rights (especially the claim rights), the preponderance of rights over duties, the litigation and adversarial legal procedures as the main forms of dispute and conflict resolution and the idea of the rule of law. The relations between European legal culture and rule of law are feed back relations. The idea of the rule of law is intrinsic to European legal culture and is the outcome of this culture but on the other hand the
materialization of the requirements of his rule of law has become an important factor influencing and framing the European legal culture. In result of the historical development the rule of law based on the minimal standards has gained a limited autonomy in relation to the legal culture. The problem of crucial importance in the period of globalization is the question whether the rule of law can be effectively implanted and put in practice in not European cultures, particularly in alegalistic cultures of India, Japan, China. The idea of the rule of law is alien to these cultures but also to the legalistic cultures of Israel and Islam. Recently the minimal requirements of the rule of law are going with great difficulties to be accepted and at least partially implemented in Israel, Islamic countries and in the countries of alegalistic cultures. The rule of law on the minimal level has proved its autonomy in relation to the legal culture. But it does not concern the rule of law based on elevated standards linked with the idea of human rights.

**POSTSUBJECTIVE RELATIONAL LEGAL THEORY**

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Intersubjectivity seems to be one of the core concepts of current legal theory. This concept becomes important mainly within the theoretical frame of Rational discourse theory, when takes place the attempt to oppose to the critique brought on modernity by philosophers inspired of the postmodern epistemology of human sciences. Intersubjectivity appears then in Law as the field of development of communicational structures between legal subjects aiming to realize their private autonomy and furthermore in Politics as the level of experience of cooperative deliberative procedures tempting to give expression to the public autonomy of the citizens. Intersubjectivity remains insofar the arithmetical sum of many different subjects. We scope to replace the concept in question by attributing to it the meaning of pure relational structure. Legal or political (or ethical, economical and so on) subjects are analysed no more as anthropological preconditions of discourses but rather as the product of dynamic relations incorporating elements of truth and power, which constitute the framework of institutionalized scientific formations like Law or Politics.

**THE MEANINGS OF LEGAL THEORY**

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The term ‘legal theory’ is in considerable use in legal science and its philosophy. It refers to: 1) legal science or science of law; 2) philosophy of law or legal philosophy or jurisprudence; 3) writings in a certain branch of the legal sciences; 4) a peculiar aspect of analytical studies of law; 5) an effective form of organization of legal knowledge and cognition in some field of legal studies. In the framework of a methodological structure-nominative reconstruction of theories, we give some arguments that only the fifth meaning bears on a relationship to meaning of theory in natural and advanced social sciences (economics, demography, etc). The contemporary methodology of science is a ramified area of philosophy of science that have built and analyzed adequate, reliable, testable and manageable reconstructions of theories. Its methods use informal and formal tools. The latter comprises not only logical, but also mathematical (set-theoretical, category-theoretical, topological, algebraic, etc.), cognitive and computer tools. There are many theory reconstructions (standard, semantic, structuralist, problem-solving, operationalist, structure-nominative, etc) most of which are unknown to legal scholars and philosophers. As a result, they often operate with very general notions of theory. The structure-nominative reconstruction explicates systematic character of theories, their composition, relations between them, etc. It has revealed which internal composition should have theories in order to fulfill the functions usually prescribed to them. According to it, any matured theory has five subsystems of the highest hierarchy level. *The logico-linguistic subsystem* covers all theory components severalized by the standard reconstruction (languages, basic and deduced propositions, rules of inference). By means of this subsystem, theoreticians express and order knowledge on theory domain. *The model-representing subsystem* includes the system of abstract models of realities under study. The structuralist reconstruction elaborates some of its structures. By means of this subsystem, a theory realizes functions of describing, explaining and predicting phenomena from its domain. *The problem-heuristic subsystem* consists of system of questions, problems, and tasks that are formulated and resolved by a given theory. *The pragmatic-procedural subsystem* includes varieties of procedures, operations, and methods used by other theory subsystems. *The linkage subsystem* includes numerous
connections between other subsystems and ‘agglutinates’ them in a whole. The distinguished features of theories are the higher degrees of logical ordering, validity, effectiveness, attitude towards resolving practical problems, specific model- and procedure-ladenness.

FROM THE FORMAL RATIONALITY TO THE NEW PRACTICAL RATIONALITY OF LAW
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This work intends to explain the changes which have taken place in the Law of contemporary States, where there has been a substitution of the liberal paradigm. This paradigm corresponds to the legal-formal-rationality model, which specifies that Law must be regarded as a mechanism that prevents certain types of behaviour within a system that gives it coherence, such as a security mechanism that, at the same time, directs us towards values such as freedom and equality. With the passage of time, however, the radical transformation took place when we realized that the liberal model could only contribute to achieving equality in homogeneous societies, making the need to differentiate and make equal through the Law more and more relevant.

From this perspective, equality is portrayed as a criterion used to distribute freedom and is projected onto its holders, which is why we can state that the formal equality implies the absence of discrimination. The passage from the liberal to the social state of Law has constitutionally resized the dynamic and expansive value of human dignity. From this we can infer that there is a Constitution that is the most important law in the system and that directly determines the validity of the other laws in the system.

The Constitution is made up of values, principles, fundamental rights and rules that affect the government, however, the principles are directly and indistinctly applicable by legislators and judicial operators. Within the scheme, the key element are the fundamental rights which make up the basis of the legal system in the formal and material sense, because they set material limits on public and private powers, in addition to establishing what their aims should be, and serve as institutional guarantees, objective rules that make up part of the legal system and subjective rights that have a particular value over the above-mentioned powers and relations between individuals. But, nowadays, there are new spaces where there are innovating socio-post-materialistic programmes and policies to promote peace, the well-being of the environment, gender and racial equality, that are led by new groups and social movements. B. de Sousa Santos describes contemporary capitalist societies as having four structural contexts and hence four structural subjectivities: home is the responsibility of the subjectivity of the family, production or work is the responsibility of the class, citizenship is the responsibility of the individual and the world is the responsibility of the nation. It is clear that we are dealing with issues of legal configuration and social acceptance, as legal treatment of autochthonous of the latter. To this we must add the positive aspects of multiculturality, which gives different forms of life a certain freedom, but minorities ask for equal treatment, the right to be equal in rights to the majorities, and the possibility of social integration. For this reason, for fundamental rights to be exercised in freedom and equality, dialogue and intercultural programmes are necessary. It is all about reaching the globalization of rights in and from the identity of individuals and groups involved, as a result of permanent and mutual communication, and adapted to reality.

TOPOLOGICAL METAPHORS IN PONTES DE MIRANDA’S LEGAL THEORY
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Francisco Cavalcanti Pontes de Miranda is one of the most prestigious jurists of last century’s Brazil. His work spans for more than 50 years, with an array of around 100 books, written since the 1920’s, mostly in private, procedural and constitutional law. Methodologically, he suffered influence from the neo-positivistic scientific approach of the Wiener Kreis and from the German tradition of civil law (Pandectics). The central issues of his doctrine are therefore related to the so-called theory of the "juridical fact" (Tatbestand), which is the “gateway” to the, as he calls it, “world of law”, where “juridical relations” exist. “Incidence”, as Pontes de Miranda takes it, is the key idea to a perfect understanding of how things happen in such environment, the legal or juridical “world”. For Pontes de Miranda the main task of legal science would be to distinguish the legal world from the real one in order to determine the solution to the cases. The rule of law would have an immediate incidence over natural or human events, “legalizing” and so introducing them, as if it were, in the "legal world". Inside there, the rule determines all the proper legal efficacy of such events, which, from that point on, could be logically calculated by jurists. A legal system is a logical system for him at all ends. As he puts it: “one who is inside the legal system, whatever it be its spatial extension is like one who moves
inside large gardens, full of curves, straight lines, prominences and projections. There are the incidences: the thought of who planned the garden has fallen over the landscape and has created those settings, those effects, new realities for the previous state of the land. To tread on the garden is not to erase the incidences. It is just to crush the lawn, to trample over the plants, to leave marks on the flowerbeds. In other words: it is to hurt realities not incidences; the gardening plan continues to exist and the intervention of the State to repair the garden, through Justice and Administration, is not different from its intervention to repair the realities created by juridical incidences”.

THE INTERPRETIVE REALISM AND MICHEL TROPER’S THEORY OF THE "CONSTRAINTS OF LEGAL REASONING": A HERMENEUTICAL READING

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The project of conceiving a legal science on the model of the empirical sciences has been recently renewed as a part of the so-called realist theory of interpretation (RTI), associated with the name of legal theorists working on the basis of both kelsenian and realist legal traditions, like Michel Troper and Riccardo Guastini. According to the RTI, specially in Troper’s version, interpretive legal statements are neither true nor false. However, that doesn’t mean that the interpretation laid down by law-enforcers is a function of their free will, since their behavior is determined by a set of factors, among which it would be possible to identify and to describe those who derive from the existing set of interpretive officials and from the set of concepts and theories employed in their reasoning. The description of the functioning of that system of "specifically legal constraints" would then provide the object of a empirical legal science, and the warrant of the scientific character of that approach would lie in the entire evacuation of interpretive elements. It is interesting to observe the development of that project of an empirical legal knowledge and how it conceives of himself as a radically anti-hermeneutical one. It is rather questionable if the RTI really provides a pure descriptive, non-interpretive analysis of legal constraints, but it is also possible to propose a (quite paradoxal) redefinition of it as a hermeneutically sensible analysis of the historical development of the concepts and theories conditioning and underlying the argumentative construction of legal systems. That reflection seeks to explore the connections between the proposed analysis of legal constraints and the main concepts and the global meaning of the “hermeneutics of action” (Ricoeur, Taylor).