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# DEL VECCHIO'S IDEALISTIC PHILOSOPHY OF LAW VIEWED IN THE LIGHT OF A TRANSCENDENTAL CRITIQUE OF PHILOSOPHICAL THOUGHT

BY

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## I

Some years ago the second revised and amplified German edition appeared of GIORGIO DEL VECCHIO's *Lezioni di Filosofia del Diritto*, translated and introduced by the well-known German philosopher of law, F. DARMSTAEDTER. The German title is *Lehrbuch der Rechtsphilosophie*.

On different grounds this voluminous work (627 pp. text) deserves particular attention. DEL VECCHIO, professor at the University of Rome, is the Nestor of the Italian philosophers of law and doubtless the most representative contemporary Italian thinker in this branch of philosophy. His numerous works have rightly acquired an international reputation.

The first Italian edition of the present work has appeared in 1930 and was followed by six later editions (7th ed. 1950). It has been translated in different languages (German, Spanish, French, English, Turkish, Japanese, Rumanish, Portuguese).

In addition this work confronts us with a system of philosophy of law which is still inspired by the mind of a transcendental idealism in its most classical Humanist sense. As such it seems to stand outside of the prevailing currents of contemporary thought. For this idealism with its strong belief in human reason was supposed to have been definitively conquered since the first world-war. The Kantian critique of knowledge which sought the *a priori* conditions of mathematical natural science in a system of transcendental logical categories of the human understanding, in their synthesis with time and space as forms of sensory perception, could not stand the test of the recent development of physics and mathematical science. The historical mode of thought, initially closely connected with post-Kantian idealism, had already completely emancipated itself from the latter in the second half of the last century and developed into a Historicism leaving no room for any belief in supra-historical eternal ideas or thought forms. Depth-psychology destroyed the idealistic view concerning the dominating position of the rational conscious functions in human life. A historicistic or vitalistic "*Lebensphilosophie*" revived in a new sense the old Heraclitean adage of the continual movement of the creative stream of life. And finally the fundamental spiritual crisis of Western culture gave rise to a powerful development of existentialistic philosophy and irrationalistic phenomenology, which completely broke with the clas-

sical tradition in Western thought and dethroned the abstract reason as the ultimate point of reference of human existence.

The whole recent crisis of philosophical thought is characterized by a fundamental suspicion with respect to the certitudes and axioms of the traditional modes of thought. The reason is that this crisis does no longer concern particular problems of philosophy, but much rather the deeper religious pre-suppositions of Western philosophy as a whole since the time of Renaissance. It is in the first place a crisis of belief, which is not to be overcome with the aid of rational philosophical arguments.

DEL VECCHIO's work is not affected by this crisis, it is not even concerned with it. To him the Kantian critique of pure reason is still the definitive solution of the epistemological problems concerning mathematics and natural science. His confrontation of transcendental idealism with positivism and historicism is essentially oriented to the philosophical situation of the XIXth century. Neither the new turn in historicism since WILHELM DILTHEY, nor the rise and powerful development of modern phenomenology and existentialism play a part in this philosophical confrontation. His view of sociology is equally oriented to the situation of this science in the last century and does not take into account its development in recent time.

But this does not detract from the high value of DEL VECCHIO's work as a classical system of philosophy of law, which from a transcendental idealistic viewpoint offers a synthesis of the classical natural law tradition with the historical approach to human society and law formation.

This is all the more remarkable since neither in the neo-Kantian, nor in the neo-Hegelian philosophy of law which developed in Germany during the first decennaries of the XXth century, there was question of a revival of the classical natural law tradition. The tidal wave of Historicism and positivism had destroyed the belief in material legal principles and material standards of justice whose content was supposed to be rooted in an eternal natural ethical order of practical reason or in the rational-ethical nature of man. The neo-Kantians considered KANT's material *a priori* "*Vernunftrecht*" to be incompatible with his critical method both in epistemology and ethics. For this method implied a sharp distinction between the *a priori* forms of theoretical and practical reason and the empirical changeable matter of experience and ethical norms of human behaviour.

RUDOLPH STAMMLER, who was the first to apply this critical method to the theory of law, sharply distinguished the transcendental logical concept of law and the transcendental Idea of justice. The first was supposed to be the formal transcendental condition of any variable experience of legal phenomena; the latter was only considered to be a transcendental form of theoretical judging positive law after the measure of justice, whose content was viewed to be completely conditioned by the empirical historical situation. In this sense STAMMLER spoke of a natural law idea with changing contents. He circumscribed his transcendental idea of justice as "the community of freely willing men". The formal principles which he derived from this "transcendental ideal of justice" were exclusively oriented to the Kantian ethical idea of man as an autonomous end in itself which does not permit itself to be made into a mere means for the purpose of other men.

KELSEN even rejected this formal-critical idea as a supposed universally