

Contemporary Philosophy: A New Survey

Guttorm Fløistad *Editor*

Philosophy of Justice

 Springer

Philosophy of Justice

Institut International de Philosophie

La philosophie contemporaine

Chroniques nouvelles

par les soins de

GUTTORM FLØISTAD

Université d'Oslo

Tome 12

Philosophie de la Justice

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International Institute of Philosophy

Contemporary Philosophy

A New Survey

edited by

GUTTORM FLØISTAD

University of Oslo

Volume 12

Philosophy of Justice



Springer

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Preface

The present volume is the last of the series *Contemporary Philosophy*. As with the earlier volumes in the series, the present chronicles purport to give a survey of significant trends in contemporary philosophy.

The need for such surveys has, I believe, increased rather than decreased over the years. The philosophical scene appears, for various reasons, more complex than ever before. The continuing process of specialization in most branches, the increasing contact between philosophers from various cultures, the emergence of new schools of thought, particularly in philosophical logic and in the philosophy of language and ethics, and the increasing attention being paid to the history of philosophy in discussions of contemporary problems are the most important contributing factors. Surveys of the present kind are a valuable source of knowledge of this complexity. The surveys may therefore help to strengthen the Socratic element of modern philosophy, the intercultural dialogue or *Kommunikationsgemeinschaft*.

So far, 11 volumes have been published in this series, viz. *Philosophy of Language and Philosophical Logic* (Vol. 1), *Philosophy of Science* (Vol. 2), *Philosophy of Action* (Vol. 3), *Philosophy of Mind* (Vol. 4), *African Philosophy* (Vol. 5), *Medieval Age Philosophy* (Vol. 6/1 and Vol. 6/2), *Asian Philosophy* (Vol. 7), *Philosophy of Latin America* (Vol. 8), *Aesthetics and Philosophy of Art* (Vol. 9), *Philosophy of Religion* (Vol. 10), *Ethics or Moral Philosophy* (Vol. 11).

The volumes are, for various reasons, of unequal length. The obvious shortcomings, especially of Vol. 5 on African and Arab Philosophy, have to some extent been compensated for in the volumes on Aesthetics (Vol. 9) and Religion (Vol. 10).

The present volume on *Philosophy of Justice*, containing 21 surveys, shows different approaches with a variety of interpretations (Greek philosophy, Muslim law, European and American philosophical justice).

The chronicles are as a rule written in English, French and German. In the present volume, 3 surveys are written in French and 18 in English. The bibliographical references, with some exceptions, follow the pattern introduced in earlier volumes. The bibliographies themselves usually follow at the end of each chronicle, arranged in alphabetical order. The bibliographies are selected and arranged by the authors themselves.

I am grateful to a number of persons who in various ways have assisted in the preparation of this new series. My thanks are first of all due to Ms. Kari Horn. Without her help, the volume would have been delayed. I am also most grateful to the Secretariat, especially to Ms. Catherine Champniers and Ms. Grace Frank, at the Institut International de Philosophie in Paris. They have done the final proofreading as well as put up the indices.

My thanks are also due to the Centre National de la Recherche Scientifique (Paris), and to the Conseil International de la Philosophie et des Sciences Humaines (UNESCO), and to the staff at Springer.

Oslo, Norway
January 2014

Guttorm Fløistad

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Introduction

Guttorm Fløistad

With the present Volume 12, *Philosophy of Justice*, the Chronicles Series has come to an end. With this volume we are moving into a sensitive and embarrassing field. The distance between word and action is still violating the basic rights of millions of people. Poverty has, of course, diminished, especially in Africa and Asia. However, in certain parts of the world, the United States and Europe included, the number of poor people have increased. According to the UN, the number of poor in the world has increased by 100 million people between 2008 and 2010. The Aristotelian notion of “distributive justice” has certainly been translated into practice through the centuries. Sometimes, however, it goes the wrong way. (See also f.inst. Fernand Braudel *Les structures du quotidien. Le possible et l'impossible*, Vol. I–III. Paris: Librairie Armand Colin, 1979).

What we have definitely lost is the belief that there are natural rights. This is the view that there are norms that may be regarded as laws, even if they are not authorized by the state or founded in customs. It is commonly agreed among most lawyers that any judgment should be sound and just both by interpreting the laws and by deciding questions of rights that are not solved by laws or prescriptions. These views must not be based on pure evaluation, but have as their source a knowledge of the fact that there exist norms of rights that have a different foundation than positive rights.

What then is the origin of natural rights? Some think that they have a divine origin: natural rights have their origin in religion. Moreover, religion gives natural rights their authority. The phrase “King of God’s grace” is well-known. In Sweden the phrase was in use up to 1973, according to Thorsten Eckhoff, professor of law at the University of Oslo, although it was long since an empty phrase. There is a painting of ancient times that shows how the sun-god handed law over to King Hammurabi some 2,000 years before Christ. And we all know the story of how Moses was handed the Ten Commandments on Mount Sinai. Such ideas of how the State and government have a divine origin are called “theocratic”.

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However, natural rights may also have their origin in reason. Ancient Greeks had no conception of the religious model. Instead, reason studied nature. Both Plato and Aristotle mentioned reason and its interpretation of nature.

The Stoics fully developed the theory of natural laws and natural rights in the year 200 BC. These laws of nature were common to all nations and gave people their rights. The Stoics regarded natural laws and natural rights as having the same origin in nature.

The Stoic view was accepted early on by the Roman Empire. Cicero, among others, took several of his views from the Stoics. They had general validity, applying to people everywhere. The Romans distinguished between their own free citizens and other races. The laws and rights for the free citizens were called *ius civile* and for the last group *ius gentium*. Reflection on natural rights played a central role in the development of *ius gentium* and influenced also *ius civile*.

Quite a few authors of the present volume point to the close relationship between natural rights, and civil rights and morality. This is obviously correct, because in order to obey legal rules you have to obey moral rules in general. It must be difficult to act against the law and be a criminal in one part of life and a saint in the rest. This means, however, that obedience to laws is met with the same difficulty as obedience to moral rules. This is not knowledge of the legal rules, but commitment to them. Commitment or duty is not merely a question of rational argument, but of emotional affection.

Eros and Polis is the title of a book that appeared a dozen years ago (2002, Cambridge University Press). The subtitle is *Desire and Community in Greek Political Theory*. The title gives a new meaning to Eros: It is education to citizenship. It was an honor similar to citizenship in the Roman republic. To be a member of a Greek city and the Roman state was the essential purpose of education, *Senatus Populusque Romanus—S.P.Q.R.* In ancient Greece, this was achieved by handing over the male youth to older men. This was not primarily a case of homophilia, but rather of creating a feeling of love for the city and the Greek community.

This is one of the points emphasized by Bertrand Saint-Sernin in his article “La justice à la lumière des lois”. He asks: What is the point of returning to Plato? Do we have something to learn?

We certainly have if we are to abide by history. The commitment to the laws requires, however, primarily a commitment to your community. You have to develop a political Eros in all members of a society, in native-born citizens as well as in members of foreign origin. (The author points, by the way, to the fact that all or most countries have foreigners in their society, just as the Greek and the Romans had). At this point, most countries have a long way to go. Instead of political education, most of us in the West focus on a variety of knowledge in order to cope with demands of our economic system. We seem to be dragging the rest of the world with us instead of focusing first on our political and cultural identity.

Any legal system is part and parcel of the identity of the citizen. In this context, it is, presumably, easier for the “*législateur*” and the government to point to what is needed for the development of society and to point to the persons needed to fulfill the changes. Saint-Sernin also points to the close relationship between the history of

nature and the history of man, between cosmology and anthropology. That is why the two should not be separated. Misuse of nature leads to the destruction of man. Philosophers and psychologists have long since pointed to the *necessary* interdependence of man and nature.

The history of man and nature tends to reduce the Platonic ideas of both man and nature. At the end of the Middle Ages, Kepler developed a mathematical picture of nature and some hundred years later came forward with the mechanical view on the Universe—up to the extinction of man. Man became the victim of biology or the biosphere. Bernard Saint-Sernin, however, does not believe in the products of the brain. Man with his mind and matter is more than can be conceived of in mathematics and sense perception and biology. Mathematics and science have solved some of our problems. Justice is one of the most pressing one worldwide.

Man should not remain inactive in the face of nature, but should apply, perhaps following Plato, his creativity in both science and the humanities to modify his own biosphere. Whether the politicians of today know their *daimon* and are able to fix the “good” for development is doubtful. Plato’s *laws (Nomos)* and dialogues are not valid just for a Greek city. The laws and the dialogue carry a general message that conflicts should be solved not by violence, but by a dialogical procedure.

Justice is a main problem in Aristotle’s *Politeia*. To participate in politics is natural. It is part of our nature to live and co-operate with others. To participate in government, in the broad sense, is even an honor. Aristotle never mentions the term individuality. This may even be correct. An individual person has never existed. If we follow modern psychology on the theme “attachment”, originating in Britain in the 1950s (by Mary Ainsworth and John Bowlby), there can never be an individual. We are all from the very outset necessarily related to our mother, father, sisters, brothers, friends and colleagues in working life. This idea of a necessary relation originates in philosophy, in Aristotle, Augustin, Spinoza and many others. An individual can only be understood through his relations. The problem of the relation between the individual and the community (*polis*), as Eleni Leontsini states, has still not been solved.

Justice is related to equality. There are obvious inequalities, f.inst. between the rich and the poor. If the rich have too much power over the poor, opposition and conflict may easily arise. That is why Aristotle recommends a great majority of the middle class to have a stable and lasting government. Aristotle also discusses oligarchy and democracy. Oligarchy is not a good form of government, for the reasons mentioned. Neither is democracy, because it rests on a false assumption of freedom: Freedom is to do what one wants. It obviously runs counter to the “natural” participation in the *polis*, or political community. Freedom may even destroy a community—and itself—and result in a “lonely crowd” (David Riesman 1950).

Justice is also related to friendship. Friendship is even, in Aristotle, ranked higher than justice. Justice is a good for any community. Friendship is, however, a higher good. A reasonable interpretation is that they belong together. Friendship is a relationship that guarantees the validity of the legal system. It guarantees the commitment to the system.

The thoughts about natural rights in the Middle Ages were influenced both by Christianity and by the ancient Greeks. The most important philosopher of natural rights in this period was Thomas Aquinas. His teaching of natural rights is still valid in the Roman Church. Thomas was a monk of the Dominican order and a deeply religious man. In addition, he had a profound knowledge of ancient Greek philosophy, especially Aristotle. The two sources of natural rights mentioned above, God's Commandments and human reason, joined into a unity in Thomas. God's will was the primary source of rights; God had given man reason which enabled him to acquire an insight into the eternal law of the world (*lex aeterna*). Just as with the Stoics, Thomas regarded the eternal law such that it included both the natural laws as well as the moral and natural rights.

Thomas surely knew Tertullian, the father of the Latin Church, and his work. His well-known phrase runs: *Credo, ut intelligam*, or in English, "I believe, in order to understand". That is, belief in this context opens up for an understanding you otherwise do not have access to. Or, in general: Your attitude is decisive for the kind of knowledge you are able to acquire. Perhaps the Christian belief combined with reason opens up to knowledge of natural laws, that is, laws of the God that created the world.

Thomas had a strong belief in reason, but did not think that it gave us access to the entire eternal law. God therefore gave us the Holy Book to enable us to acknowledge what we cannot achieve by reasoning alone. Nevertheless, Thomas strongly believed in the power of reason in the arrangement of natural rights.

The situation in France in the sixteenth century is difficult although some of the problems (*mutatis mutandem*) are similar. The French humanist and jurist Jean Bodin engaged himself in two major political problems: the concept of sovereignty and the concept of absolutism. In a country divided politically, religiously and socially, this is not an easy task. It was Thomas Hobbes who developed his concept of absolutism and his concept of sovereignty. However, the seeds of the concepts were definitely Bodin's. That is why Thomas Krogh said of his contribution, "The modern state comes into being".

The concept of sovereignty is related to a definition of state power. It is based on the principle "no one above, and no one alongside". If there are two or even more persons who hold the position, conflicts are likely to occur.

In his law studies, Bodin came across Justinian and the Roman legal system. In the beginning, he thought that Roman law was valid also in his own time and asked for extensive translations. After his studies in humanity, especially in history and philosophy, he acknowledged that the authorities and the population were in need of a much more elaborate system of laws. This could only be achieved by interpreting the system of laws in various countries in application to France. In this respect, Bodin was also concerned with the idea of a climate theory of the mentality of nations and peoples, and the question of whether absolutism and state power presupposes a unity of religious belief.

The radical development of science in the following centuries also led to a change in the theory of natural laws and rights. The peak of natural theories was reached in the sixteenth and the seventeenth centuries. The dominant trend, as could

be expected, was the rationalistic view on natural rights, liberated from religion. Reason became the final source of natural rights. The founder of this rational trend was the Dutch philosopher Hugo Grotius and the German-Swedish philosopher Samuel Pufendorf. They both lived during the Thirty Years' War and experienced the need to create order among the states. In 1625, the well-known book by Grotius *De iure belli ac pacis* (*On the Law of War and Peace*) was published. Here Grotius explains his views on when it is permitted to us to engage in physical violence, and wage war, and on the foundations for peace. This was in accordance with his view on natural and civil law.

Grotius was an extremely gifted youth. He wrote poems in Latin when he was eight years old and enrolled at the university at eleven, was later appointed historiographer and attorney general by King Henry IV. He was a "miracle", the author, Andreas Harald Aure, quotes in his contribution.

The natural right is the right to self-preservation. However, the best form of self-preservation is to co-operate with others. Man's social behavior with others is a fact. Man is a rational being, wishing a peaceful co-existence with others. To preserve a social order is the real source of natural right, a point of view Grotius also argues for with reference to antique sources. In addition, he draws on the general validity of the Golden Rule: You should not do to others what you do not want others do to you. It also involves that you should respect other people's rights and their properties. The natural rights of the individual are thereby also an anticipation of the later respect for "life, freedom and property". What the individual has a moral right to can in no case be a right to the declaration of war. It follows from the same right that you should pay back your debt.

A warlike situation also occurs at sea. In 1609, Grotius published a chapter from an earlier manuscript entitled *De Mare Liberum* (*On the Freedom at Sea*). Among other themes, it deals with the right of taking prey at sea. Adam Smith was one of those who greatly learned and further developed his thoughts on natural rights from Grotius.

The principle that agreements should be kept and many others are distinct natural rights—between states as well as between individuals. The rational view on natural rights was the basis of agreements between citizens of a state, usually called *the social contract*. At this point, the social contract could be variously formulated—to the effect that one state could have an authoritarian ruler as in Hobbes with *Leviathan*, as well as in a democracy where you could have a democratically selected ruler, as in Locke. The knowledge of natural laws was gradually changing, from the "laws" of an organic world as in Spinoza, to the laws of a mechanistic world as in Descartes.

One can ask whether the social contract theory was historically founded or just a social construction as in Hobbes: But even as a construction under an authoritarian ruler, it may help individuals not to act "wolfish" toward each other. Samuel Pufendorf, German of origin and for many years professor in Lund in Sweden, worked intensely with natural rights as well as on civil rights in general.

Besides his well-known biographies of the Swedish Kings *Gustaf II Adolph* to *Karl X Gustaf*, Samuel Pufendorf is best known as a moral and legal philosopher,

and included his history of philosophy. His main work, from 1672, shows that he was also engaged with the laws of nature, entitled *De iure naturae et gentium* (*Om naturen og folkenes rett*) (nearly 1,000 pages).

In moral philosophy, he anticipated the Kantian distinction between the phenomenal and noumenal, pointing to what would later be called the “autonomous moral subject”. Kant’s critical philosophy is, at the same time, the main reason why Pufendorf largely disappeared from the history of philosophy. He was, as Thor Inge Rørvik says, “written out” of the history of philosophy. This is the reason why several historians of philosophy are trying to bring him back—with some success.

Pufendorf was inspired by some of his contemporaries, like Grotius and Hobbes. But he also criticized them. He was strongly opposed to Grotius’ scholastic view on the relation of God to natural laws. The only natural law that existed was the principle of self-preservation. It applied to all living beings, including man. The natural law teaches one “how to conduct oneself to become a useful member of society”. Politics and warfare were often related in one way or another to theology. On the basis of his version of the natural law, he desocialized politics, warfare and civil society. Each individual, due to his dignity, has the right to equality and freedom. What modern writers find most attractive in Pufendorf is his theory of moral duties and social being, as opposed to that of rights. With these views, Pufendorf also presupposes later philosophy, while giving critical remarks on liberalism. Freedom is only a moral quality of highest value on the basis of duties. This is similar to the view held by Spinoza and, later, by Hume and Kant.

Spinoza (1632–1672) takes us one step further in his political thinking. He holds to the principle of self-preservation as the primary natural law. He just regards it as an integrated part of God or nature as a whole. Because of his excommunication from the Jewish community in Amsterdam due to his “natural” view on God, he was often accused of being an atheist. He strongly denied this.

Paola De Cuzzani rightly emphasizes *Tractatum theologicus politicus* as Spinoza’s key work in his contribution to politics. In the theological part of the book, Spinoza argues against the accusation of being an atheist; in the other part, on the freedom of thought and speech. De Cuzzani has, of course, to draw on Spinoza’s work *Ethics* (*Ethica more geometrica demonstrata*). This is his main work on the theory of knowledge and on moral philosophy. Spinoza belongs to those philosophers who regard moral philosophy not as a separate discipline, but as identical with a theory of knowledge (as, f.inst., Hegel and Heidegger). This is to say that, in order to achieve freedom of thought and speech, you have to move from the first kind of knowledge (gained by opinion and impression) to the second and third kinds of knowledge or those gained by reason and *amor intellectualis erga Deum et naturam* (the intellectual love of God).

From the point of view of natural law, one has of course the right to self-preservation. While being on the first kind of knowledge, to some degree one is subject to external forces. As a member of a civil society, you have to move to the second kind of knowledge. On this type of knowledge, you have even command over external forces. The third kind of knowledge is, according to De Cuzzani,

reserved for the sages, although if you dedicate the whole of your life to its pursuit, Spinoza holds, you too may achieve it.

In the following centuries, natural rights' theories met with great resistance. Both Hume and Bentham strongly objected to the idea of natural rights: Natural rights cannot be known objectively; they are subjective, they held. Moreover, moral notions cannot be known. Arguments that there are objective norms for the morally right action they regarded as an illusion. Those who held that natural rights are eternally valid were most easily refuted. In Germany, much of the resistance came from Ranke and the historical school.

As a result of this criticism, the natural rights movement came to ill reputation. In addition, in the present and the former century, the idea of natural rights played a modest role—except within Islam and, after the Second World War, the human rights movement. In Norway, the movement is now fighting for a place in the Parliament. In view of the damage done to nature with pollution all over the world, the human rights movement has become a forceful movement, also supported by the UN. That body has even appointed a commission having meetings in various states around the world.

Islamic leaders hold on to their tradition. They strongly believe in God and human reason. Rational knowledge, according to Lars Gule and Knut Vikør, can unravel how God has construed nature, and thus what natural laws are. It is, however, not possible through reason to determine the normative status of human actions, whether an action is good or bad. This can only be done by God and by his authority alone. Vikør adds that the legal system of the Muslim countries today is basically a secular one, formed on a Western model. There has always been a place of some relevance of the *Sharia* model of law.

This state of affairs was confirmed by my visit to the IKIM Institution in Kuala Lumpur. Their Islamic business procedures were clearly similar to what we do in Europe. The only difference was that they concluded every business transaction by asking for God's approval. It should be added that the Institution deeply regretted some recent developments of their religion.

This volume contains two contributions on Islam, one from the fourteenth century by Lars Gule, and one from our century by Knut S. Vikør.

Ibn Khaldun is an historian and sociologist of the fourteenth century. He left North Africa and settled in Cairo. For over 20 years, he served as a teacher and judge at the school of jurisprudence. Lars Gule points to his cyclical theory of history based on a dialectic between desert and city. The two main forms of organized "habitats" are found in the desert and small villages among the nomads, and in the towns and cities, usually called a dynasty or a state, which is a form of civilization. Law and justice are part of "the semantic" of the state. Within the settlement there are various groups fighting for superior power, resulting in the establishment of a royal family. The dynasty and the royal authority have the same relationship as form has to matter, a notion that has a clear reference to Aristotle. The same applies to the notion of theological causation present in the development.

The moral qualities are most important in the starting point of the dynastic circle. These qualities suffer in the decline of the state. Gule quotes Ibn Khaldun: “Luxurious living, the loss of fighting, spirit, etc., easily lead to corruption”.

Khaldun distinguishes between two legal systems, laws of civilization (positive laws), and religious laws or the laws of God, or *Sharia*. The laws of civilization have a rational foundation, taking care of the relation between people. Even the religious laws are subject to learning and education. The society ruled by the laws of God, Ibn Khaldun holds, is the best. In times of crisis, religious laws would take care of the Muslims’ strength and just relationships with others.

Based on their knowledge of natural laws, one should perhaps expect that Muslims were more in accord with each other than they really are. We are confronted with a variety of groups, not only Sunni and Shia Muslims, but also different schools of interpretation of *Sharia*. Knut Vikør opens his contribution by pointing to the variety of interpretations of Muslim law. There is no agreement at all. What is of divine origin and what is added by representatives of the legal scholars? Attempts have been made by one caliph to favor one interpretation of the law, only to be immediately refuted.

The purpose of the *Sharia* is human and social welfare. In a sense, the laws are historical; if society changes, rationality may change the interpretation of the laws such that God’s intention can be fulfilled in the present situation. This is clearly a reformist view. Modern developments advocated the return to the Quran and Sunna, a description of how Muhammad practiced the laws.

Family policy and the issues of the role of woman and the possibilities of divorce are central. Concerning marriage and divorce, two schools are in opposition to each other, the Hanafi and the Maliki schools. In the first one, “the bride has a strong position in the choice of a marriage partner” without the participation of her father. In the latter school, this is impossible. The bride’s father imposes his will on his daughter. On the matter of the wife’s access to divorce, the liberal/conservative balance is opposite. The Hanafi School does not allow this at all, even on the permanent absence of the husband. The other school appears almost modern. A wife who “feels the marriage is detrimental to her” can have it dissolved if her argument convinces the judge.

Discussion about various issues in Muslim countries are regularly taking place, including the interpretation of: the political system of Islam, the relation of business to religion and whether women should be allowed to work or not. Political Islam, f.inst., *Sharia*, is heavily suppressed in Syria today. Women may perfectly well go to work in many countries, but should not be a bus or taxi driver. “Muslim feminism” is also in many places a driving force. As many philosophers are saying: What is, is what is happening.

In 2012 there appeared a book on the first centuries of Islam with the title, *Religion fällt nicht vom Himmel. Die ersten Jahrhunderte des Islams* (Darmstadt: Wissenschaftliche Buchgesellschaft). The author, Andreas Goetze, maintains that no religion simply falls from Heaven and gives several linguistic arguments against Islam in its present form (§43). The Arabic language at the time of Muhammad was

not as fully developed as we know it. Elements of several languages (Aramaic and Sassanidic and several others) have been taken up later on.

Towards the end of the seventeenth century, the political climate became milder, although the Inquisition of the Roman Church and the conflicts between Protestants and Catholics were still intensive, especially in Europe. British politics split into two parties, the “Whig” and the “Tory” movements. Locke engaged himself in the Whig party, working to establish a constitutional monarchy. The task of the Parliament was to limit the monarch’s use of power. The Tories held that the monarch’s power came directly from God to the effect that the monarch had absolute power of the subjects. In this situation, Locke published *A Letter concerning toleration* in 1689, and at the same time *An Essay Concerning Human Understanding*.

Helga Varden rightly emphasizes that *Letter* and *Essay* are beautifully written and that Locke’s work, especially on politics, greatly influenced later philosophers and economists. His ideas of toleration on labour, the acquisition of private property and religious freedom are just three of them. His *Letter* on toleration points to his later liberal political philosophy, with emphasis on the importance of individual freedom. Participating in a union in Germany, Locke observed that tolerance prevailed between all religious groups, an experience that underlined his view on religious freedom. Individual property should be acquired through the labour you put into an achievement, and influence the amount of property you acquire. Marxists and others have heavily criticized Locke, especially for this statement. What about those who, for various reasons, are not in a position to put labour into any position? What about the class society still prevalent in many or most countries? And what about the poor people and poverty in general?

Freedom is an attractive value—for those who are in a position to use and extend it. Varden points, at the end of her contribution, to the values and criticisms that followed in the wake of John Locke.

In some way or another we all have some experience with the Scottish Enlightenment. We are victims of Adam Smith’s fourfold division of freedom. Freedom applied to economic achievement involves competition. One effect is that we have to work as hard as possible. Sometime we lose a competition and have to apply for a new position in a new company. What we do not experience is that hard and fast work in the long run may be contraproductive to moral values. Because moral values, sentiments as Hume calls them, are slow. You cannot, f.inst., be grateful towards or acknowledge a person for good work by rushing along. If you do, the value has no content. While in a hurry, you neither see nor understand the other person, as Gülriz Uygur in her later article, “Seeing injustice”, would say.

To blame Adam Smith for this affair is unfair. As a moral philosopher he holds, as Hume does before him, that freedom is dependent on social commitment and cultural values. Freedom on its own may even, in the long run, be destructive to one’s “natural” self-preservation. In Europe, The European Union is partly to blame. It focuses mainly on economic development, leaving the national culture to each country. This is understandable. The danger is, however, that the one-sided focus on economy and the variety of products may weaken the cultural and moral commitment of the individual.

Sentiment is the basis of morality, and morality is the basis of justice and rights. Our sentiments and morality do not involve a natural affection for, or love of, mankind. But as members of a political society, we have a “public” interest and sympathies, and these create a need for a legal system.

On quite a few issues, Hume met his opponents. Adam Smith, also inspired by him, argued that justice was not concerned with property alone, but had a much wider validity. He also objected to Hume’s view on the artificiality of justice, that is, being a construct upon one’s companies’ self-preservation. Smith also argued against the view that justice had to do with utility. Another opponent, Thomas Reid, sees a close relationship between justice and rights. He also argued that the Aristotelian view on distributive justice is absent from Hume’s philosophy.

Empirism applied to moral values has its limits. Hume, however, connects with the classical problems of *itinerarium mentis* in his use of the term moral improvement.

It is common knowledge that Rousseau took part in the Academy of Dijon’s essay competition and won the prize. The question to be answered was, “Has the revolution of Science and Art contributed to the purification of Morals”. His answer was negative. In the Age of Enlightenment, when the belief in progress was dominant, this is at least remarkable. The reason might simply be the emergence of the mechanistic world picture, alien to man. The distance between man and nature is obvious. The moral rule of natural rights and natural laws have become civil values only. The same applies to freedom, to which Rousseau is strongly in favor. Man’s moral life lies in ruins. It is, however, following Ellen Krefting, perfectly possible to establish a second Nature, physically, morally, and politically, including a society that combines equality and freedom. To Rousseau, it meant another natural law and natural right. In his main work, *The Social Contract* from 1767, Rousseau outlined the community of free citizens, introducing their own laws by means of the idea of “general will”. A new political agenda will also help families to educate their children (*Emile* 1761). Social conflicts may be solved, and he even foresees a brotherhood between the nations and “perpetual peace”.

Most commentators dwell on the inconsistencies in Rousseau’s philosophy. Ernst Cassirer is one of the few who has brought order into his thinking. Ellen Krefting, inspired by Cassirer, does likewise. The creating of new values is the task of the individual and his community.

Kant’s philosophy of Right (or Justice) is part of one of his later books, *The Metaphysics of Morals*, that was published in 1797. It appeared nearly 10 years after his main work on ethics, *Theory of Practical Reason* in 1788. The philosophy of Right is closely tied to ethics, although in a way opposite to it. In his practical philosophy, Kant focuses on the necessity of being free. If you choose to follow the moral rule (the categorical imperative) with which you are born, you have to be free. The philosophy of Right deals with freedom, but in the sense of taking care of the freedom of others. It is normative. As Helga Varden emphasizes, you are not allowed to act in a way that violates the freedom of others. Virtue or acting ethically is a much wider concept than right. As long as Robinson Crusoe lived alone on his island, he had no use for rules of rights. In the interactive world, we are all in the

domain of the rightful coercion. Moral actions towards the categorical imperative have no limit; they should be universalized and should regard everyone as valuable in himself before regarding him as useful to something. Kant called the standard principle to be applied to the Doctrine of Right “the universable principle of Right”.

Freedom involves freedom of speech as well. Speech in itself has no coercive power. Laws that outlaw mere speech represent misunderstanding both of “freedom and force”.

Philosophy of Right includes not only general principles, but also views on private life. Kant was inspired by the natural rights theories of Hobbes, Rousseau, and Locke, and he addressed different categories of private rights, such as property rights and rights in family relations. Natural rights are each individual’s right in interpersonal relations. Property rights are achieved not in the way of Locke, but simply by taking something into account, like this is my house, this is my daughter. Kant emphasized that all possessions have a normative character. He analyzed the different principles lying behind the various types of possession.

Commentators often heavily disagree on certain parts of Kant’s exposition. Robert Nozick, f.inst., does not agree with John Rawls in the interpretation of what is called the principle of redistribution. Helga Varden has, in her interpretation of Kant’s philosophy of rights, given an inspiring presentation of a controversial theme.

To produce rational arguments for personal commitment to moral values is perfectly possible although not always easy. In hardly any case is it sufficient to change the emotional attitudes. Kant advocated the personal example. However, an example of moral behavior in a society that, according to most newspapers, abounds with opposite experiences is hardly not enough. To continue talking, in terms of moral advice, may be of no help. That is why the family is important. The family, according to Hegel, is the “primary ethical substance”. It just presupposes that children in their first year may be protected against any form of globalization. That may, however, be difficult as the parents (or the parent) in many or even most families leave the home during the daytime. Globalization has long since invaded privacy and destroyed it. That may be one of the strongholds of the Hindu, the Buddhist, and also the Roman Catholic and the Muslim society.

One obvious reason for this dilemma, I think, may lie in our definition of democracy. The social contract theory involves that we all should be committed to each other. This, I take it, is at least a condition for being a society at all. Individual freedom is, of course, a necessary element of a liberal and conservative political system. A major difficulty lies in the combination of these two elements. Herbert Tingsten, the well-known editor of *Dagens Nyheter* (The Daily News) in Sweden, has written a book on the subject, in which he advances his view on the combination of freedom and social responsibilities: They are incompatible. He even says that they contradict each other. This is a very strong assumption. True enough, Isaiah Berlin and John Rawls, for instance, are obviously both adherents of a distinct form of liberalism and individual freedom. Berlin even thought that “negative freedom”, that is, freedom from all restraints, is a preferable form of freedom. Positive freedom, he argued, might lead to some form of totalitarianism. Rawls, in his book on justice

and on political liberation, spoke often of individual basic rights and liberty, as well as of social and economic benefits for the least advantaged members of society. The development of social commitment is something different. It is rarely achieved by repeatedly saying no, but rather by pointing to opportunities of action and hobbies. That, I would think, is easier achieved. As Hume and Kant both would say on account of their ethic: A sound and self-stimulating freedom is achieved on the basis of social commitment only.

All movements are every now and then in need of renewal. Part of the renewal will always be what has happened before. This applies to the feminist movement as well. For Mary Wollstonecraft and many, or perhaps most, others, feminism is a human or humanisation movement. Both women and men are human beings despite their gender differences. This is the message in Mary Wollstonecraft's well-known book, *A Vindication of the Rights of Woman*. Kjersti Fjørtoft offers a clear outline of what it is about. Both sexes are equally rational and have rights. Consequently, they need education. History in England tells us that men have used their power to deny women education, to the effect that they can neither properly pursue their duties nor demand their rights. John Locke defined freedom, health and property as natural rights. Freedom is the most important right we all are born with. This is the normative value in political theory. Freedom cannot be limited apart from encounters with the freedom of others. Women have too long been the victims of accidental power.

Edmund Burke criticized both the French Revolution and defended rich people's property and honor. For Wollstonecraft, this is the target of criticism. Rich people's property and honor often lead to their neglect of moral education, for which women are suffering. Neither rich people nor women can develop themselves into proper citizens. A woman's primary task is to perform her duty as a mother and wife. The responsibility of a mother is, however, limited in time, in addition to the fact that not all women are mothers. All women should therefore be given the opportunity to work and to take care of themselves. The right to paid work is necessary for all women.

The *Education of Daughters* from 1787 makes the education of women a necessity for forming future societies, each of the sexes in its own way. That is why Wollstonecraft attacks Rousseau's "old-fashioned" view on the education of children, in contrast to her appreciation of his other works. In the education of children at school, she emphasizes the importance of moral education. This is a matter of reason, as was common among many philosophers at that time. Some critics rightly hold that, according to another interpretation of Wollstonecraft, emotion together with reason is the proper solution.

In the mid-1950s, the Marxist Ernst Bloch wrote a book in two volumes called *The Hope as a Principle of Life*. Although you can observe tragedies, both personal and social, nearly all over the world, hope is still a powerful aspect of life. As Nietzsche once said: Life will itself. To deliberately end it is not in accord with life itself, but with external forces. Hope requires freedom. In addition, freedom, as Terje Sparby holds, is a key word in Hegel in his philosophy of right, together with closely related notions like rights and spirit (*Geist*). Rights are based on freedom and spirit. In order to be free, one has to have self-knowledge, and self-knowledge

is “to understand oneself as spirit”. The body and corporal matter can hardly have any self-knowledge. Self-knowledge is a spiritual matter, although it always includes knowledge of the body.

One way to understand these notions and their relationship is to start at the beginning. And the beginning is the family. The family, according to Hegel, is the primary ethical substance. This is a formation of the personal self and self-understanding as well as the relational capacity. The family is the formation of friendship and love. Self-understanding is part of the relation to others, persons and objects. It just needs a reflexive movement within reason itself. This leads to the understanding of freedom, with the Hegelian phrase, freedom consists in “being with oneself in otherness”. Freedom is not negative, in the sense of being freed from all restraints, as Isaiah Berlin holds. It is both determined and undetermined. It needs to be undetermined in others to be free. But it is to some extent determined, due to the experiences the person in question has “suffered” or achieved.

Hegel’s concept of freedom is a comprehensive one. It is the expression of the undetermined expression of the mind, or spirit, and right. The system of rights is an expression of the genuine freedom, Hegel says. Freedom is the basis of rights. Moreover, freedom is closely related to ethics. As mentioned earlier, becoming and being a person is in every aspect a moral affair. The realization of freedom is successive in the family, society, and the state.

The various interpretations of Hegel sometimes put an end to history due to “absolute reason”. This has several times been refuted. He may be interpreted otherwise: as meaning reason has finally reached itself as a living and reflexive force in the state expressed in freedom in the system of rights. Whether all of us in the world have reached this state of development is a pressing question (cf. Terry Pinkard 2011).

Criticism of capitalism is older than Karl Marx, although he has delivered the most systematic and radical criticism. His viewpoint is, in a way, mentioned already in *The Communist Manifesto* from 1848. “Everything holy has become unholy”. Marx distinguishes between political and human liberation. Political liberation in general, through individual rights and liberation, may be achieved in religious societies. However, it is not sufficient for “true” human liberation. What is not sufficient for the human liberation is the individual liberal concept of freedom. The true freedom, as Jørgen Pedersen rightly notes, is freedom within a community with others. The liberal state creates problems for itself.

A central concept in Marx is alienation. This happens in a state with a liberal economy. Frequently after 1850, when new owners took over and focused only on profit, they neglected their employees as human beings. The individual is alienated in several directions, also from other employees. The liberal economy does not contribute to building the community.

Religion is made by man and has no place in the future society. Hegel had already placed religion in the Middle Ages. Reason had taken its place from the nineteenth century onwards. Marx took over his dialectical model, and observed that the economy in a system varied in different ages, and that the various systems contained conflicts that caused the historical change. The main reason for the change of

capitalism lies in the reduction of profit. The price of the necessary technology in a competing economy makes it harder to survive.

Time will show whether the improvements in our centuries are sufficient for rescuing our economic system. Charles Handy, a well-known author, wrote a book a few years ago about the need to find the meaning of life beyond capitalism. He is reporting the experience of many people.

Having experienced two world wars, the second bringing huge suffering to her own people, in addition to being a highly reflective person, Hannah Arendt went a short way to become a political thinker. Her credo is *political existentialism*, probably inspired by Martin Heidegger, who was her teacher for some years. The credo is a policy that has relevance for the crisis of “today’s globalized and complex world”. This means, as Odin Lysaker formulates it, that it should involve “an analysis of the totalitarian ideologies, of the depolitization of democracy and the dehumanization of human dignity”.

She explains the sources of globalization and its consequences. Man is basically free, a fact that in the future will counteract any suppressive ideologies in all places. Her main work is *The Human Condition*. She distinguishes between power and violence. Power is based on communication that makes co-operation possible. Violence plays a major part in the depolitization of democracy. This is due to a political crisis because of “privatization and intimatization”. It becomes conformist and less meaningful. According to Lysaker, Hannah Arendt advocates the public form, the *agora* of the Greek *polis*, to revive individual freedom and true political communication. The place of the body and bodily dignity are also important notions.

Her radical view on Eichmann after the Second World War is at first surprising. It arose when she observed Eichmann in tribunal. He “subjugated” himself to the Nazi ideology, to the effect that it killed the moral individual. Eichmann was no longer an individual.

Parts of Arendt’s viewpoints have been criticized by a number of people. Odin Lysaker mentions Habermas. He objected to her conception of the “social”. To Habermas, the social is an important characteristic of man’s behavior and communication. In terms of a dialogue, it can make the individual free. To Hanna Arendt, the social is to be privatized. There need, however, to be no inconsequence.

In his *Theory of Justice*, John Rawls draws on the tradition of contract theory and thinks, according to Andreas Follesdal, that each member of a free society will agree on certain principles irrespective of their faith. Justice is deeply situated in everyone. Equal opportunity to achieve different positions is an example. His key theme is “Reflective equilibrism”: In periods of economic development, the distribution principle should give decisive weight to the most disadvantaged. This theory is an alternative to utilitarianism—Adam Smith, Jeremy Bentham, John Stuart Mill. The only thing that matters for them is “welfare” in the sense of either happiness or the satisfaction of needs.

The chief problem Rawls tries to solve is the conflict between freedom and equality. A conflict arises when “rights, duties, benefits, and burdens” shall be distributed. The voices defending freedom and even more freedom, undoubtedly at the same time, reduce the value of equality for many people, perhaps the majority. In his

attempt to solve the problem, Rawls draws on the traditional social contract theory applied to the social institution as a whole. Rawls' philosophy of justice is a serious attempt to break off veils of ignorance among the political parties.

Rawls is being criticized, f.inst. by Amartya Sen, for ignoring personal differences among people, especially people with some demanding needs, such as disabilities. Justice or fairness is a challenging contribution both for the theoretical discussion—and for the politician.

John Rawls wrote on social justice. According to Dominique Terré, he is moderate and lucid. If one extends the topic, one may ask: What about global justice? This is certainly too ambitious, if not senseless. Dominique Terré also wants to be modest and embark upon discussing two authors and their contributions to justice, Alain Renaut and Alain Supiot. Renaut focuses on human development the ethics, including the global ethics involved in development. At the same time, he focuses on anti-development, which is an idea that comes from the Middle Ages and from the Occident. He suggests a variety of steps to help human development. Alain Supiot accounts for justice from the point of view of a lawyer.

In the discussion, the author draws on prominent names such as Amartya Sen, Martha Nussbaum, Thomas Poppe, and John Rawls. Amartya Sen stresses the normative aspect of development and points to the importance of economy for “justice and fairness” in any society. He may have pointed to the millions of refugees and people imprisoned in various countries for political, religious, and other illogical reasons. The need for a global ethic is doomed to remain a wishful thought. The liberal society may not apply everywhere, or at any rate for the near future. The author asks for a further discussion between Rawls and Sen, the latter questioning Rawls' rigorous defense of the liberal society. Freedom does not take ethics seriously.

Renaut, referring to Amartya Sen, introduces the notion of capability as basic for development. Also Joseph Stiglitz is called upon to assist in human development. His report “Pour une vraie réforme du système monétaire et financier international” is no doubt of great value. What comes out of it and of Renaut's development program, only the future can tell.

Arnold Gehlen defines man as an entity of want. Therefore everyone has to extend its being in order to be what it is. Philosophy has in various ways accounted for these deficiencies. A fairly common definition among philosophers is in terms of care for oneself, or as a struggle for life (f.inst., Augustin, Spinoza, the physicist Erwin Schrödinger and Heidegger). Hegel speaks of “being with oneself in another”. Psychologists speak of “attachment” to illustrate the necessity of a relationship. Peter Kemp in his article on Ricœur takes this extension further, in that he like Hegel speaks of love, friendship, charity and praise, all related to justice. The discourse related to praise, f.inst., is “the glorification of charity” in I Cor. 13:4–5.

This procedure is not without an ethical character. Indeed, if you practice the notions of “well-being” with someone else, your move to the highest level of morality and justice is secured.

Another key word in Ricœur is “recognition”. He speaks of two types, recognition built on “reciprocity” and recognition of “mutuality”. “Reciprocity” refers to

Hobbes, where each man acknowledges the other as equal, especially in court. “Mutuality” refers to Levinas (and before that, Aristotle). With reference to Levinas, Ricœur calls mutuality a counterpart to friendship. And to friendship belongs forgiveness, a rare word in philosophy.

Kemp refers to a French professor of law, Antoine Garapon. He draws a distinction between “reconstructive” justice, which is the mutual recognition that establishes the legal order, the corrective justice, which punishes crime and distributive justice, that “allocates goods and burdens” (Ricœur). The overall value of having a system of law is that there can be no law at all without the recognition of legal equality. Even if no crime is committed, the existing system of law may help in establishing what they in the Renaissance called “the dignity of man”.

Hardly anyone discovers the value of someone else (La Bruyère (1645–1696).

This is the problem dealt with by Gülriz Uygur. We often do not really *see* another person. If we follow Emmanuel Levinas, this has much to do with one’s moral outlook. We may sometimes be so self-centered that someone who passes by, remains unidentified. We often don’t see injustice done to that person either. Uygur distinguishes by categories: justice and injustice, the concept and conception of them. Conception is the wider category, taking into account the entire context of the harm done to somebody. The Nobel laureate Amartya Sen, who also discusses the problem, uses an example: If anyone sees “a big fish devour a small fish”, it is a fact and not an injury. In the context of a society, you become conscious of the injustice.

The author quotes Saint-Exupéry: “It is only with the heart that one can see right”. What is important is invisible to the eyes.

To see someone and identify him/her requires that you see his/her values. To see those values, you have to know the person. More precisely, you have to know yourself in order to see another. To respect someone and regard him as your equal, you have to have developed those values in yourself. It is not a question of self-perception, but of self-preservation and self-realization. More precisely, it is a question of communal values. In an “age of uncertainty” (Handy), it is no easy matter. The author ends with pointing to some of the difficulties.

A warning is needed. To speak about liberal democracy and the ancient Greek cities as a model for our own development is promising for some of us, but not for all. Jean-Godefroy Bidima points to the challenges nearly all societies have, and refers especially to Africa. For the question of justice “in a world gradually secularized” and having to fight against “the return of racial, ethnic and religious fundamentalism”, there are at least three different types of mistrust to the application of a legal system. *First*, the mistrust to the enactment of the legal system through media; *second*, the question of the credibility of a legal system in a world pervaded by mistrust and cynicism; and *third*, the difficulties pertaining to the extension of the international commission for punishment of the accused and the rights of property to the earth.

We all know about the difficulties reported in the media. I shall briefly comment on just two points: that the media does not always convey the rights to the common people, but to the elite is only just one point. However, the author could have

mentioned the misuse of media. The misuse of media, which is extensive in most countries, weakens the commitment to moral risks in general and therefore to some extent to legal rights. A mind that always is in a being loses gradually the caring relationship to himself and to others. The same applies to the hectic life in the modern, or as Bidima expresses it, post-modern industrial culture. Even personal relations, if they exist to other people, can turn commercial, and regard people as products that can be bought—and dismissed. “La lumière” (Kant) of the relationship is lost. The pace of the hard-working society often inflicts upon us the inability to genuinely enjoy the slowness of cultural performances. Emphatic, if not to say, love relationships are always a slow happening. Otherwise, they do not exist. No wonder that Bidima turns Ricœur’s formula “la sagesse pratique” into “la sagesse tragique”.

In the meantime, some of us may comfort ourselves with a word of wisdom picked up in India and the Philippines. Wandering in the poverty-stricken quarters of Calcutta and Manila, close to a bank guarded by a group of police officers with machine guns, I noticed that the doors to the street often were open. Sometimes I was invited in and under refusal was offered their last can of Coca-Cola. During the conversation some of them said, “We are rich, we just don’t have any money”. This is what the American sociologist David Riesman alluded to in his well-known book *The Lonely Crowd* in 1950 and called the considerable riches transmitted by tradition. The United States from the 1950s and, later on, European countries, according to Riesman, are guided by “external forces”. To acquire a rich inner life, despite what has happened, may be the key to commitment to any legal system and to one’s community.

La Justice à la Lumière des *Lois*

Bertrand Saint-Sernin

1 Introduction

Il peut sembler inutile de réfléchir à la justice en se référant aux *Lois* de Platon : quels rapports y a-t-il, en effet, entre les cités grecques et la Terre en voie de mondialisation ? La justice a-t-elle le même sens dans des sociétés aux dimensions réduites où les hommes se connaissent et dans des entités politiques immenses où l'individu est anonyme et comme noyé ? Peut-on définir la justice de la même manière quand les moyens de communication étaient la parole, l'écrit et le déplacement des hommes à pied, à dos d'animal, à la rame ou à la voile, et quand l'information devient multiforme et instantanée ? La justice a-t-elle le même sens si l'univers est jugé périodique ou qu'il est en évolution et les vivants en devenir ? Enfin, la justice ne change-t-elle pas de sens et de champ d'application quand la vie, la nature, le cerveau et la conscience deviennent l'objet de modifications, au lieu d'apparaître dotés d'une essence stable ? À première vue, la lecture des *Lois*, loin d'éclairer la notion de justice, égare la réflexion.

Pourtant, les *Lois*, comme le *Timée*, ont traversé les siècles et l'on y trouve des thèmes d'actualité. Ce sont eux sur lesquels nous méditerons.

1. Selon Platon, on ne peut disjoindre l'histoire et la nature de l'homme, d'une part, la nature et les lois de l'univers, de l'autre. Cette conception n'a pas disparu, car on définit toujours l'identité de l'individu et la nature des sociétés en se référant à la nature et aux sciences de la nature : les tentatives pour dissocier l'anthropologie de la cosmologie ne sont pas convaincantes.
2. Le législateur des *Lois* définit les charges qu'une société doit assumer pour se développer ; il sélectionne les individus capables de remplir ces charges. Ce thème conserve son actualité.

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3. Un troisième thème-connexé du précédent-n'a pas vieilli : (1) découvrir quel est le but unique d'une cité : cette découverte étant le seul moyen pour l'entité politique de ne pas errer ; (2) discerner la méthode qui permet d'approcher ce but. L'exigence d'unicité du but que se donnent les sociétés signifie que le politique, pour remplir son office, doit substituer aux opinions ordinaires des opinions vraies ; essayer de transformer en connaissances scientifiques ces opinions vraies ; retourner dans la caverne pour transmettre à ses concitoyens un peu de la « connaissance parfaite » qu'il a entrevue. Ces trois thèmes ont conservé leur actualité à travers les siècles.

Il serait tentant d'en ajouter un quatrième : la différence entre la fondation des cités par essaimage et par rassemblement en un même lieu d'immigrants venus de différentes régions.

2 Cosmologie et Anthropologie

Pour les Anciens, quelle que soit leur école philosophique, la vie juste harmonise l'ordre du monde et l'ordre social. L'astronome Timée, dans le dialogue qui porte son nom, doit élever à l'unité d'une même science cosmologie et anthropologie. Or Platon voit que ce but est lointain, peut-être même inaccessible, puisque, au début du *Timée*, il place le mythe de l'Atlantide, indiquant que la représentation duale de la réalité, par le récit dramatique et les mathématiques, n'est pas près de disparaître.

L'Athénien des *Lois* déclare : « Amis, le dieu qui a dans ses mains, suivant l'antique parole, le commencement, la fin et le milieu de tous les êtres, va droit à son but parmi les révolutions de la nature ; il ne cesse d'avoir à sa suite la Justice, qui venge les infractions à la loi divine (*tou theiou nomou*) et à laquelle, modeste et rangé, celui qui veut le bonheur s'attache pour la suivre... » (716 a). Percevoir les lois de l'univers et s'y ajuster n'est pas, pour Platon, renoncer à sa liberté : « Ainsi changent, dit l'Athénien, son porte-parole, tous les êtres animés, par des changements dont ils ont la cause en eux-mêmes, et, cependant qu'ils changent, ils se déplacent conformément à l'ordre et à la loi du destin » (904 c).

Il évoque ensuite le sort de celui qui reste sourd à la loi divine, « gonflé d'orgueil, exalté par la richesse, les honneurs ou encore la beauté physique associée à la jeunesse et à la folie (*anoia*), [il] enflamme son âme de démesure ; à l'en croire, il n'a besoin ni de maître ni de chef d'aucune sorte, mais se sent même capable de conduire autrui... ».

Qui se comporte ainsi « reste abandonné de Dieu et, à cause de cet abandon, il s'en adjoint d'autres qui lui ressemblent pour bondir désordonnément et tout bouleverser » (716 b). La démesure exerce un effet d'entraînement. L'homme « abandonné de Dieu » ressemble à l'univers, « quand Dieu en est absent » (*Timée*, 53 b). Dieu n'abandonne pas les hommes, mais les hommes peuvent décider de se séparer de Dieu par un processus que Platon décrit et qui produit non seulement « la mort de Dieu » dans le sujet, mais « la mort [effective] de l'homme ». Le *Timée*, 53 b

précise : « Ils demeureraient dans l'état où il est naturel que soit toute chose d'où Dieu est absent ».

Faute d'évidences empiriques et démonstratives, aucune cosmologie ne s'impose : nous devons prendre parti, ou « voter » ; l'inspiration du *Timée* conduit, à l'époque moderne, des savants, admirateurs de Platon comme Kepler, à sacrifier la cosmologie du maître pour ne garder que son style mathématique ; depuis près d'un siècle, il est avéré que notre univers est en devenir. Comment articuler cosmologie et anthropologie, si le réel évolue ? ; enfin, la science n'est plus contemplation (*theoria*) de l'univers : elle agit sur lui au point que se constitue une technosphère qui interagit avec la biosphère et l'ordre physico-chimique.

La justice, dans ces conditions, ne concerne pas l'humanité vue comme une « communauté éthique » (Kant) intemporelle ; elle prend en compte l'inscription du destin collectif dans la nature et dans l'histoire. D'où la réflexion de Cournot dans ses *Considérations sur la marche des idées et des événements dans les temps modernes* (1872) : l'homme est devenu « le concessionnaire d'une planète ». Être juste, c'est donc essayer de bien gérer la Terre.

Qu'est-ce que cela signifie ? À son époque, Cournot trouve comme philosophie de la nature dominante le positivisme, pour qui, note Joseph Fourier dans sa *Théorie analytique de la chaleur* (1822), « les causes primordiales ne nous sont point connues », mais seulement les lois qui expriment certains traits des phénomènes. Cournot a une autre ambition pour la science : qu'elle reconstitue les processus causals d'où résultent les phénomènes observables. La tâche ne lui semble pas irréalisable puisque la synthèse chimique recompose par art les corps naturels et en fabrique que « la nature a oublié de faire ». Le pari du réalisme est donc tenable.

L'espérance chimique de Cournot s'est au cours du dernier demi-siècle étendue à l'ordre vivant : avec le développement des biotechnologies et l'émergence de la biologie de synthèse. L'origine de la vie reste énigmatique et la reconstitution de la vie par l'art, incomplète, mais il n'est pas téméraire de penser que la philosophie des sciences peut revêtir la forme d'une philosophie de la nature.

Reste à discerner ce que pourrait être une telle philosophie de la nature. L'éventail des solutions est large : identifier l'homme avec son cerveau et poser que l'anthropologie se confond avec les sciences cognitives et même avec la biologie ; au contraire, refuser de réduire l'ordre humain à l'ordre biologique, en reprenant, par exemple, la thèse du *Timée*, selon laquelle notre être est fait d'un « génie (*daimôn*) » de facture divine et d'une « âme mortelle » ; croire que tout, dans le comportement humain, peut être amené à la clarté de la raison ; ou, au contraire, penser qu'une opacité irréductible subsiste au cœur des êtres (Platon et Aristote) ; mettre l'accent sur l'intersubjectivité ; ou sur l'atomicité des individus ; considérer la connaissance comme contemplative ou voir en elle le moyen de modifier la nature. Ces divers choix ont une incidence sur notre conception de l'homme.

Pour ma part, je ne crois pas à l'identification de l'individu et de son cerveau ; je souscris à la thèse de Platon, qui refuse d'identifier l'ordre humain à l'ordre biologique. En effet, je crois à l'inséparabilité du *daimôn* et de l'âme mortelle, c'est-à-dire à l'Incarnation ; je ne pense pas non plus que nous puissions dissiper entièrement l'obscurité de notre être ; je crois aussi que nous vivons à travers un réseau

d'interactions, de conflits et de certaines formes d'entraide et que la communion des saints en fournit une bonne image.

Et, surtout, je pense que la mission de l'humanité n'est pas de rester passive devant la nature, mais de modifier la biosphère en mettant au service de la justice la créativité de son esprit.

3 Sélection

L'Athénien des *Lois* observe : « il y a deux tâches politiques : la remise des charges à leurs titulaires et les lois que l'on distribue aux diverses charges » (735 a). Le législateur a deux rôles : sélectionner les titulaires les plus compétents pour exercer une charge ; définir les règles du jeu qui sont les plus valables pour l'accomplissement d'une fonction donnée. En effet, « c'est à des hommes que nous nous adressons, et non à des dieux. Or, la nature humaine consiste principalement en plaisirs, en douleurs et en désirs, auxquels tout être est à la lettre comme suspendu et accroché par ses préoccupations les plus profondes » (732 e).

Platon part de l'élevage : « Quiconque a pris en main quelque troupeau, berger, bouvier, éleveur de chevaux ou de tout autre de ce genre, n'entreprendra jamais de le soigner sans l'avoir d'abord épuré par l'espèce d'épuration qui convient à chaque groupement : séparant le sain de ce qui ne l'est pas, les bonnes races et les mauvaises, il renverra celles-ci à d'autres troupeaux et soignera le reste, en considérant quel vain et insatiable labeur imposeraient un corps et des âmes dont le naturel et la mauvaise éducation, après les avoir eux-mêmes gâtés, ruinent en outre ce qu'il y a de sain et d'intact dans les mœurs et les corps de tout le troupeau, le mal passant d'une tête du cheptel à l'autre si on n'y pratique une sélection en l'épurant » (735 b-c).

Le mot « sélection » passe très mal en France, même si l'on y sélectionne officiellement les sportifs et les élèves des grandes Écoles et, sans le dire, les autres étudiants. Max Perutz, dont le laboratoire de Cambridge fut le plus productif en prix Nobel que l'on ait connu, disait que, pour qu'un laboratoire fût créatif, il fallait bien sélectionner les chercheurs ; et les encourager. Il ajoutait qu'il ne fallait pas leur fixer de programme de recherche. « Sélection » se dit « *diakatharsis* » (735 d) : il s'agit de séparer les animaux sains et ceux qui ne le sont pas. Mais Platon dit que, pour le politique, cette opération est plus importante que pour les agriculteurs (735 c). L'Athénien observe que le processus de sélection le meilleur est douloureux (*algeinos*) (735 d).

Les charges pour lesquelles le législateur des *Lois* sélectionne les candidats sont définies par la loi. Ces définitions, quoique précises, sont à présent, dans la plupart des cas, obsolètes. Rester fidèle à l'esprit de Platon, c'est donc utiliser les sciences pour caractériser les charges qu'une société doit remplir pour fonctionner au début du XXI^e siècle.

Définir les charges, dans une société, est un acte politique : on le voit aujourd'hui en France où les métiers industriels ont tendance à disparaître, sans qu'on sache si c'est inéluctable, souhaitable ou nuisible. En pratique, les politiques ont besoin, pour remplir cette mission, d'experts, notamment de sociologues. En effet, dans les sociétés en devenir, apparaissent des fonctions inconnues auparavant, par exemple, en