English summaries

ENGLISH SUMMARIES

A. Bondolfi, «Punishment: a subject to rediscover in ethics and law, RThPh 2009/II, p. 115-126.

In contemporary thought, the subject of penal sanction and its assumed justification has partly followed the different phases of the renewal of moral philosophy and of philosophy of law in general by its more or less explicit integration. At the same time, penal philosophy has taken its own paths, influenced by factors external to moral philosophy, as, for example, the social movements linked to the phenomena of marginality. In scientific literature of the French language, the situation of penal thought appears to differ, as it seems to ignore these subjects and developments. In the last years, however, one can find new interest, even in the French speaking countries. It is hoped that the following contributions might be taken into this movement by encouraging it and nourishing it by going deeper into some specific aspects.

N. Campagna, "Does the State have a categorical duty to punish?", RThPh 2009/II, p. 127-140.

After long considering the right to punish, the philosophy of law should now more precisely question the duty to punish. This is the aim of the present contribution, in identifying the proceedings in which the State would have the duty to punish the guilty person. It will be shown that for not one of these proceedings, is it possible to establish, beyond doubt, a categorical duty to punish. At most, one might be able to establish the existence of a duty to punish upon the decision of society. The current importance of these reflections on the question of eventual state punishment should be obvious for anyone who has followed the history of numerous countries that have passed, in recent decades, from basically unjust political regimes to more just ones through a policy of penal amnesty.

S. Biancu, «Punishment, symbol, authority», RThPh 2009/II, p. 141-156.

On the basis that the current crisis of penal sanction and the current crisis of authority have (partly) common roots, this text attempts a common reading of the two. The theory is that, having lost all symbolic ulterior resource (having authority), in our modern, liberal societies, law has become the ultimate foundation beyond which nothing else exists. A purely formal foundation, turning out to be incapable of authority. Thus this article seeks the possibility of a response to crime which can have authority, a possibility found in the new role attributed to victims. The conclusion is that the (necessary) response to crime does not necessarily involve penal sanction.

F. De Vecchi, «Premeditation: some remarks from a philosophic, ethic and juridical viewpoint», RThPh 2009/II, p. 157-178.

In this article, I approach some problematic aspects of the controversial concept of premeditation, on the basis of the analysis elaborated by the phenomenologist and law

philosopher Adolf Reinach. As shown by the different roles attributed to premeditation in principal Western penal codes, it is difficult to grasp in a univocal manner the significance of this juridical figure. It presents a philosophic and ethical problem touching upon the definition of intentional and voluntary acts and the relationship between acts and agents, as well as a juridical problem concerning justice and the fairness of punishment.

A. KUHN, «Can we do without penal punishment? An abolitionism to meet contemporary challenges», RThPh 2009/II, p. 179-192.

A rapid glance at the diverse functions of punishment permit us to see that penal sanctions do not respond to the expectations that we generally apply to them. Thus our justice of the sword, by which we seek to resolve a conflict between individual interests and place them on a scale to re-establish a balance must be rethought and, ultimately, probably replaced by a justice of the needle which, like a tailor, works to repair the social fabric torn by a breach of the law. Contemporary penal law is also destined to be deeply reformed, even to disappear, in favour of more amiable solutions to conflicts, such as mediation.

F. HALDEMANN, «Transitional Justice : for a collective recognition of victims», RThPh 2009/II, p. 193-208.

What response can be made to the «radical evil», unimaginable and inexpressible, that the 20th c. produced, evil associated with places such as Auschwitz and Srebrenica? How can justice be rendered in the face of such crimes which, by their extreme violence, prove to be both unpardonable and un-punishable? These questions form at the same time the challenge and the paradox of what today is called Transitional Justice. In the following reflections, we hope to construct the discourse of Transitional Justice – meaning a justice inevitably imperfect and fragile – in terms of recognition: recognition of the victims and their sufferings in the face of the scorn of society. In this perspective, we try to show the collective dimension of the discourse of recognition, which considers Transitional Justice "on the basis of" and "with" those who have suffered the massive violations of their human rights.