

informed about what is happening in the world (especially in continental Europe and in the Anglo-American debate). It is important as well that some foreign works that shaped the 20th century were translated into Slovenian. Among these are Gustav Radbruch's *Rechtsphilosophie*, Hans Kelsen's *Reine Rechtslehre*, H. L. A. Hart's *The Concept of Law*, and various works by Ronald Dworkin—including *Taking Rights Seriously*, *A Matter of Principle*, and *Law's Empire*—edited by Aleš Novak.

20.4. 20th-Century Bulgarian Philosophy of Law: From Critical Acceptance of Kant's Ideas to the Logic of Legal Reasoning (by *Vibren Bouzov*)

20.4.1. Bulgarian Philosophy of Law before 1944

In Bulgaria, there exist no more than a handful of studies on the development of the country's own philosophy of law and its accomplishments. These studies are far from comprehensive, even as a group: Only brief outlines of that development have been published, dwelling on specific ideas put forward by representative thinkers active at various times (cf. Popov 1970, Nenovski 1998). My analysis here is an attempt to bring out the main through-line in the development of Bulgarian philosophy of law today.

A proper account of Bulgarian philosophy of law in the 20th century requires an attempt to find, on the one hand, a solution to epistemological and methodological problems in law and, on the other, a clear-cut influence of the Kantian critical tradition. Bulgarian philosophy of law follows a complicated path, ranging from acceptance and revision of Kantian philosophy to the development of interesting theories on the logic of legal reasoning.

The development of philosophy in Germany exerted a major influence on the nature of philosophical discussions in Bulgaria before World War II: That was an important aspect of the broader cultural and political influence that Germany had on Bulgarian social life, as well as on its political development and legal system.

During that period, philosophical life in Bulgaria was overwhelmingly dominated by German idealist philosophy (Hegelianism and Kantianism), and in particular by the dualist philosophy of Johannes Rehmke (1848–1930), as interpreted in an original way by Dimitar Mihalchev (1880–1967), a renowned Bulgarian philosopher (Rehmke 1923, Mihalchev 1933). After 1951, these philosophical interests were shelved at the country's universities and at the Bulgarian Academy of Sciences—all of them crushed under the ideological steamroller.²⁰ In the first half of the 20th century, the analytic orientation, and

²⁰ From 1944 to 1949, Bulgaria became a communist country, once it destroyed the multiparty system and established a planned state economy. Marxism was imposed as the official ideology in philosophy and politics.

especially logical positivism, had no following in Bulgaria: It only drew criticism (Bouzov 2003a, 558–9).

Indeed, it is possible to speak of the existence of original ideas and genuine achievements in Bulgarian philosophy of law from the first half of the 20th century. The development of significant studies in Europe and beyond was dominated by realist and natural-law theories.

Historically, the first Bulgarian legal scholars after the country was liberated from Ottoman rule in 1878 graduated from German universities. Philosophical and methodological discussions on law in the country were initially dominated at that time by legal positivism, not in original interpretations. Its main opponent in Bulgaria was Tseko Torbov (1889–1987). As a philosopher, a jurist, and a university professor of law, he was the most prominent follower of Kantian philosophy in the country and was the first translator of Kant's works, developing as well his philosophical theory of law. Torbov studied law and philosophy at the University of Göttingen, Germany, where he graduated in 1929. While studying there he became close to Leonard Nelson, and their longstanding friendship is described in his memoirs (cf. Torbov 2005). In Germany Torbov defended his doctoral thesis in philosophy in 1929. His translations of Kant's basic works became universally known across Bulgaria and Germany in the 1970s. In 1973, he became an honorary member of the Kantian Philosophical Society in Mainz, Germany. A honorary gold doctoral degree in law was conferred on him by the University of Göttingen in 1974 (see Torbov 1991, 5–6).

Torbov's interpretation of the essence of natural-law theories and legal positivism is indeed fairly original. He contends that natural-law theories proceed from "rational or philosophical knowledge" in their seeking to formulate law, whereas legal positivism proceeds from empirical knowledge, looking to account for the de facto force of a given social system in action (Torbov 1992a, 13). So, in interpreting the nature of the principal discussion in contemporary legal philosophy, he starts from an epistemological point of view, understanding that discussion as predicated on an initial choice between rational and empirical knowledge. He draws the conclusion that legal positivism cannot arrive at a theory or philosophical conception of law, because it cannot reveal the properties of its development (ibid., 15–6).

Torbov further developed Kant's theory of law in a systematic way. He criticized Kant for his formalistic interpretation of the main principle of law, a principle that Kant borrowed from the classical school of natural law (Torbov 1991, 47): Kant, he argued, failed to extract the main principle of juridical law from the meaning of *moral* law.

Torbov drew a line of demarcation between the formal theory of law and its material theory. He thought that it is the task of a philosophical theory of law to set out and call for certain requirements adequate to the legal circumstances of a given society. In his view a system of law should be based on the practi-

cal necessity of mutual restrictions in the sphere of freedom among persons bound by mutual relations. The formal theory of law incorporates an analysis of the *form* of law, a form given by its correspondence to requirements or principles formulated on the basis of analytic and synthetic principles determining the nature of law. The latter principles are those of equality before the law and of the legal distinctness and autonomy of subjects of law (juristic persons): These principles make up the framework of relations among such subjects, in turn understood as rational beings with corresponding interests and obligations. The formal theory of law also formulates the principle of legal objectivity, offering as well an account of the possibility of imposing that objectivity on life. According to the principle of legal rigorism, the need for legal obligation is not determined by any goal. And according to the principle of legal indeterminism, the application of law covers a sphere of values outside of the realm of law (*ibid.*, 80–4).

The synthetic principle, forming the basis of Torbov's formal theory of law, postulates the existence of juridical law, a view set out in Kant's *Critique of Pure Reason*. According to Torbov the minor premises of the formal theory of law are given by some subsumptions in which there are no elements of the essence of legal law, nor are there any empirical elements. These premises are based on the idea that legal law only pertains to relations among rational beings. The first subsumption deriving from those premises is the one defining the need to express thoughts by means of language; the second subsumption posits the need to provide for a definite distribution of possessions. The possibility of making mistakes in the process by which law is known is itself a subsumption, and in that possibility lies the difference between juridical law—which belongs to the practical realm—and the laws of nature. The possibility of making mistakes for lack of good will is also a subsumption stating a thesis of the same type (*ibid.*, 84–8).

In action, the main principle of law and the subsumptions set out above lead Torbov to the formulation of the four postulates of his formal theory of law. These postulates are as follows: (1) Rational beings must recognize a single compulsory language for use in their mutual relations; (2) possessions must have a distribution based on a definite scheme; (3) rational beings must accept the resolution of legal disputes on the basis of public law as applied by courts of law, where decisions are made under the provisions of that law; (4) legal security must be guaranteed, meaning that society must enforce the law so as to thwart the intentional violation of laws (*ibid.*, 90–3).

Torbov's material theory of law, as distinguished from the formal one, is concerned with determining the *content* of legal law. The theory is characterized in the first place by the idea that justice is a right, and that as such it defines a genuine rule of law. Justice defines a rule under which individual liberties are delimited in their interrelationships; this means that everyone is equal and that no one can claim any special privilege. The dictate of justice is

an expression of the operation of juridical law; it is of an *a priori* nature as the foundation of law (Torbov 1992b, 217–41). The postulates of the material theory of law define an obligation of people to govern the form of their relations by means of contracts; it also flows from these postulates that people have to comply with those provisions of law under which possessions are distributed. According to these postulates, people have to accept the distribution of possessions and the principle of equality, as well as the principle of redress as the foundation of penal law (Torbov 1991, 97–102).

The philosophical conception put forward by Tseko Torbov is a brilliant reaction to the spirit of the legal positivism that was holding sway in legal science and legal practice in Bulgaria before World War II. It marked a turning point, when an authentic critical tradition began to take hold in legal and philosophical debate in the country.

Mention should be made here of the ideas developed by Venelin Ganev (1880–1966), a leading legal theorist before World War II, since he exerted a remarkable influence on the mainstream of Bulgarian legal philosophy, irrespective of his affinity for legal positivism and normativism. Having graduated in philosophy, law, and music from the universities of Leipzig and Geneva, he returned to Bulgaria and taught philosophy of law at St. Kliment Ohridski University of Sofia over a ten-year period. He was a cabinet member, then Bulgarian ambassador to Paris, and then a member of the Council of Regents until the dissolution of the Bulgarian monarchy in 1946. His two-volume *Uchebnik po obshta teoria na pravoto* (Textbook on the general theory of law: Ganev 1990), published in 1932, contains a relatively comprehensive definition of the philosophy of law and an original conception of the nature of law as a whole.

In contrast to many legal theorists, Ganev drew a distinction between the philosophy of law and the general theory of law, a distinction based on their object and scope. According to him, a philosophical analysis needs to be aimed at investigating “the place of law in the whole of the existent, the first cause of its genesis and its givenness, and its ultimate nature” (ibid., 9; my translation), and it must also seek to explain its meaning in the context of human life, truth, justice, and the good. The general theory of law, by contrast, does *not* take on this task: It only seeks to achieve a synthetic unification of the special and the general knowledge of law; this amounts to saying that the general theory of law is concerned with studying the legal phenomenon in its most general aspects (ibid., 9–10).

Ganev developed an original conception of the nature of the legal phenomenon as a unity of (i) legal facts, (ii) legal consequences, (iii) the subject and object of law (i.e., the persons and things that law applies to), and (iv) the legal norm. He does not equate law and the object of the general theory of law with legal norms, as legal positivism does; rather, he equates them with the relations among legal subjects (the juristic person), defined in sociological and naturalistic terms, or with certain psychological or value elements. He holds that these

elements are all “normatively processed” in the legal phenomenon. He therefore espoused a “definite eclecticism” (Nenovski 1998, 37; my translation), drawing on the different traditions in legal philosophy to identify the basic elements of the legal phenomenon and bring out their interrelations. Following the Kantian tradition, he held that one can define the object content of legal reality by methodological study; he did not see much value in metaphysical or speculative projects. In light of this integrative context we ought to understand his definition of legal reality as “mentally sociological,” by which he meant to refer to a “normative sociological reality” (Ganev, 1990, 13; my translation).

Vitali Tadjer, a prominent legal theorist from the communist period in Bulgaria, rightly remarked that Ganev’s works set “a very high, perhaps *the* highest, standard” in Bulgarian legal theory (see Tadjer’s introduction to Ganev 1990; my translation). Ganev’s ideas importantly influenced the concepts of law espoused by an entire generation of Bulgarian legal theorists who held academic positions in the age of totalitarian communism: Prominent among these theorists were Neno Nenovski, Vitali Tadjer, and Zhivko Stalev (see Nenovski 1983, Tadjer 1998, Stalev 1997). All too regrettably, however, the general theory of law was soon to be removed from university curricula, beginning in 1949, when it was replaced by Marxist theory of state and law.

20.4.2. *Bulgarian Legal Philosophy and General Jurisprudence from the Communist Period and after 1989*

The idea of bringing up for discussion the conception of the multidimensionality of law as a complex ontological phenomenon was put forward for the first time by Zhivko Stalev (1912–2005), an outstanding Bulgarian legal theorist and practitioner and head of the Constitutional Court in his lifetime. According to him, law exists in four different types of being (four ontological dimensions): He thus identified normative, social, material, and psychical law, ascribing priority and a decisive role to the psychical dimension. The ontological existence of a legal norm is only existent in the human mind and has a physiological correlate, too (Stalev 1997, 18-9). His development of a modernized version of legal realism backed by a psychological interpretation can be described as his most important contribution to the theory of law.

The idea of the multidimensional nature of law is well known in the Polish psychological school as well: It can especially be appreciated in the works of Jerzy Lande, a proponent of the conceptions put forward by Leon Petrazycki (Wolenski 1999, 4–5; Lande 1959), as well as in works by other Polish theorists of law.²¹ Lande espouses the “cherished” positivist thesis that legal norms cannot be formulated on the basis of factual statements: He, just like some of his followers, views the law as a normative system and a socio-psychological

²¹ On Lande see Chapter 19 in Tome 2 of this volume.

phenomenon. Stalev tries to develop a more general conception than that of traditional psychologism. Much like the German legal philosopher Georg Jellinek, Stalev gives a quite broad interpretation to what he calls “the normative force of facts” (Stalev 1997, 36; my translation), for he understands that force to mean that the normativity of law is dependent on the external facts of objective reality. But he also goes on to *list* those facts, classifying them as natural (geographical, climatic, ecological), biological (genetic heritage, instincts), psychical (different types of belief), and social. Other dimensions of law (the psychical and the social) can also influence its being normative: These dimensions are no doubt available in the world of existence. The normative force of facts results from a totality of different causal relations that hold between the facts of objective reality and the normativity of law, namely, its being normative (*ibid.*, 36–7).

In Bulgaria, there exists a definite tradition that attempts to fashion the conception of causality in legal and philosophical thought into a comprehensive interpretation of law. In the 1960s, Venetsi Buzov (1906–1983), a professor at the Institute of Legal Sciences of the Bulgarian Academy of Sciences, sought to develop a theory of criminal law premised on Marxist postulates. According to him, a legal conception of causality must include not only physical causation but also psychological dependencies, such as the intentionality behind action. In criminal law this causal link also covers (*i*) an act, (*ii*) its consequences in a situation of social danger, and (*iii*) the conditions of causation, discoverable in the characteristics of the *corpus delicti*. The functioning of this link can be understood taking into account the influence of psychological factors (*cf.* Buzov 1964, chap. 2).

Mention should be made here of the work of Neno Nenovski (1934–2004) for his attempt to develop an axiological theory of law (*cf.* Nenovski 1983). Nenovski was a founding member of the Bulgarian section of the International Association for Philosophy of Law and Social Philosophy (IVR); in 1985, he became its head and would carry on in that role for many years to come. It was his ambition to define the essence of law as a mental phenomenon and its values as criteria of law itself. According to him, values are the “ideals” of law and are defined by specific social needs and interests. He championed the subjectivist thesis that values are always rationalized: No value exists outside consciousness. Value, he thought, is a form in which reality is reflected, and he defined values as the point of view of different interests.

The years of democratic transition in Bulgaria after 1989 saw a significant positive development in Bulgarian philosophical and legal thought, since it did away with the ideological tutelage of Marxism, abandoning its dogmas and postulates. As a result, departments of law and philosophy at various national universities now offer courses on the philosophy of law and the logic of legal reasoning, and the basic grounding in Marxist theory of law and the state has been replaced with training in the general theory of law. And with the growing

influence of English across the world there has developed a growing interest in familiarizing with the analytic tradition and with analytical methods in philosophy.

Joint work and cooperation among philosophers and legal theorists in discussing on problems in the philosophy and theory of law is a new phenomenon of the past few years. If this process develops, the works of legal theorists will no longer be dominant in legal philosophy. I would think it reasonable if, in the interest of advancing knowledge at large, the textbooks used at secondary schools and universities discussed the achievements of Bulgarian philosophers; and in the same spirit an effort could be made to bring their work to a wider international audience, though I should not underrate the role these textbooks played in the 1990s in the teaching of legal philosophy at secondary schools: Some interesting ones came out during that time, along with some interesting programs (see Stojanov 1993, Yotov 1994, Bouzov 2001). At secondary schools, legal philosophy has now been replaced by courses on ethics and on the fundamentals of law.

In 2004, the Union of Jurists and the Institute for Philosophical Research of the Bulgarian Academy of Science held a joint conference titled *Truth and Justice in the Criminal Trial*. It was its aim to bring into focus and do away with the existing tension between these two concepts—truth and justice—and to define and accept a procedural theory for the legal process during Bulgaria's democratic transition (cf. Velchev 2006).

Two trends can tentatively be identified in the development of Bulgarian philosophy of law and general jurisprudence: an analytic trend and a hermeneutic one. The first of them can be related to the analytic tradition in current philosophy of law: In it one can trace out the influence of legal positivism and institutionalism, with the focus of theoretical attention being on problems involving normative systems and legal epistemology. The hermeneutic trend is instead focused on legal discourse and legal interpretation.

Included in the first research field are the theory of norms, the logical study of normative systems, and some epistemological problems in law. In contrast to hermeneutics, these investigations are largely based on linguistic and logical methods. Daniel Vulchev (1962–), a lecturer in the theory of law at St. Kliment Ohridski University in Sofia—as well as a good interpreter of European philosophy of law (cf. Vulchev 1999) and a former minister of education and science from 2005 to 2009—tried to define the place of the legal norm as a basic interpretive schema through which to gain legal knowledge. He argues that the legal norm is not a sufficient criterion of law: The law can be considered a spontaneously developing and relatively centralized legal order understood as a complex social organization. In support of his conception, he points to the withering away of the national state and the erosion of the international legal order in the globalized world. As concerns legal positivism, he puts forward the thesis that the idea of justice as an ideal of law, rich in content and value,

needs to be replaced with peace as a formal ideal effected by consensual resolution of social conflicts (cf. Vulchev 2003).

Studies on the concept of the normative system can be considered and assessed in light of various theoretical attempts to develop a comprehensive theory of legal norms. Vihr Kiskinov (1953–), a professor of legal informatics at the University of Sofia, holds that normative systems exist in an individual's consciousness. As bearers of information, such systems have definite structural qualities. Legal knowledge is imparted through a knowledge of normative structures (cf. Kiskinov 2007). Rossen Tashev (1953–), a leading specialist in the theory and philosophy of law at the Department of Law of the University of Sofia, upholds a dogmatic theory of legal interpretation: In two books (Tashev 2006, 2007) he lays out a systematic theory of law within the conceptual framework of legal positivism. He thinks that legal interpretation had specific characteristics of its own, and that a doctrinal legal theory specific to it should accordingly be brought to bear on it. Tashev puts forward an original procedural understanding of legal interpretation starting out from the relevant Bulgarian tradition (cf. Apostolov 1946, Stalev 1997). The interpretation and application of law involve both art and method. He draws a dividing line between linguistic methods of interpretation and logico-systematic ones, each governed by its own set of rules (cf. Tashev 2007). Reasoning along similar lines is Tencho Kolev (1949–), professor at the Sofia University, Department of Law, who maintains that in order for a legal decision to be fair, it must be justified, and this shows the importance of truth in judicial investigation (Kolev 2011).

Svetut na normite (The world of norms: Bouzov 2006), one of the books published by Vihren Bouzov (1966–), could well be indebted to the same tradition. It presents a grounded analysis of the achievements of the contemporary deontic logic and the theory of norms with an emphasis laid on legal norms. In it Bouzov sets out conclusions about the non linguistic theory of norms of Jan Wolenski (1982, chap. 3), and about a possible way in which this theory can be applied to axiological discourse.²² In Bouzov's view, the problems of the deontic logic relative to attempts to build up an adequate theory of norms can be resolved by means of their consideration in a wider context of decision logic. Norms are decisions by a normative authority (Bouzov 2004). In *Scientific Rationality, Decision and Choice* (Bouzov 2003b), Bouzov argues that this conception can be a methodological means by which to explain the nature of the norms of scientific rationality. Scientists make decisions to accept or reject rational norms when such decisions fall within their own understanding of the aims and problems of science, as well as within the understanding accepted by their own scientific community (ibid.). The specific characteristics of legal discourse are an argument in favour of detaching the logic of legal

²² On Wolenski see Section 16.3.3 in this tome.

reasoning from applied logic. The logic of legal reasoning calls for systematic development of its formal, methodological, and epistemological aspects (cf. Bouzov 1999, 2008).

In Bulgaria there exists a strong tradition in the informal analysis of legal discourse from a hermeneutical and a phenomenological standpoint. As mentioned, this is the second line of inquiry in the philosophy and general theory of law. The nondogmatic study of law in Bulgaria is in fact rooted in a book by Mihailina Mihailova (1937–) titled *Pravoto: Smisl, senki, protivopolozhnosti* (Law: sense, shadow, contradictions: Mihailova 2001). In it she says that law “has senses following in succession” (ibid., 78; my translation). Zhana Sharankova’s (1960–) book *Juridicheskoto mislene: Proekt za interpretativna teorija* (Judicial thought: A project for a theory of interpretation: Sharankova 2001), published in 2001, has been described by Neno Nenovski as the first comprehensive study of the development of judicial thought in Bulgarian legal literature. Sharankova is a jurist and a teacher, and this book carries forward and expands on her philosophical dissertation of 2000. She does not accept the dogmatic understanding of legal interpretation as a set of procedural rules; rather, she views legal hermeneutics as a method of legal thought whose function is to help us further our understanding the law. A similar view has been advanced by Luchezar Dachev (1952–), a professor at the University of Sofia, who depicts legal dialogue as a meeting and mutual relationship of positions occupied by subjects of law with respect to the objects of law. Law develops dialogues by means of accepted rules; these rules are a multitude of models of discourse. Dachev considers Kelsen’s positivist ideas anachronistic. In his view, the law is not the totality of norms, but the totality of discourses (Dachev 2004).

The ideas presented above reflect a great change in the development of contemporary discussions on the philosophy of law: They reflect the shift to the so-called dialogical view of law. On this view, law is considered a dialogue, a tool with which to resolve social conflicts consensually (cf. Morawski 1999, chap. 4). These conceptions can be instrumental to understanding law in the present day, when great social change is underway and the world is becoming increasingly globalized.

In conclusion, it is fair to say that the topical problems in the philosophy of law and general jurisprudence have now found an important place in the theoretical discussions of Bulgarian jurists and philosophers. But one would hope that these intellectuals could make themselves and their achievements and original ideas known to a wider public by means of publications in foreign languages and by an effort to expand cooperation among researchers on an international basis.