MODULE: INTRODUCTION TO PHILOSOPHY AND PHILOSOPHY OF LAW

LEVEL I

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COURSE OBJECTIVES

At the end of this course, the student will be able:

- To define and to explain fundamental philosophical concepts;
- To point out the problematic of philosophical thought in general and African in particular through the periods;
- To build strong reflection focused on the problems of human life and those of society and suggest the efficient solutions on the issues of actual world;
- To apply correct reasoning based on logical rules;
- To acquire appreciative judgment and the sense of value from the strong critical reflection;
- To apply critical reflection on specific domain of knowledge (hearth, education, culture, literature, society, law, politics, history, environment, science and technology, etc.

EXPLANATION OF THESE OBJECTIVES

Acquiring of knowledge of philosophical domain:

A. Historical evolution of philosophy
B. The main doctrines of philosophical thought (physical nature or cosmos, the constitution of the matter or essence, existence, human being, society, freedom, God, the good, the evil, truth, reason, etc.).

To initiate the student to philosophy: means:

- To learn how to think, to reflect, to reason by himself, to conclude in order to form the outlook of the world based on the scientific knowledge and modern technologies,
- To take action with full conscience of the aim or the sense;
- To initiate him to think about himself and his own problems and experiences;
- To reflect on the issues of world (universe) of his period and his place.

This initiation implies the adoption of a correct behavior, attitude or the manner of being and acting.
COURSE OUTLINE

I. INTRODUCTION
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4. Object of philosophy
5. Method of this course
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CHAPTER FIVE: AFRICAN PHILOSOPHY AND ITS ORIGIN

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Conclusion

GENERAL INTRODUCTION

This point contains definitions of philosophy, object of philosophy, Method and subdivisions of philosophy.

1. DEFINITION OF PHILOSOPHY
It is extremely uncomfortable to give the definition of philosophy, because it constitutes its own mode of knowledge.

**ETYMOLOGICAL DEFINITION**

The word “philosophy” comes from a Greek word “philosophia” itself is composed of two words *philia* and *Sophia*

**Philia:** Love, towards, search

**Sophia:** Wisdom according to its meanings:

The practical wisdom, i.e the conduct integral human being, and knowledge or science.

The term “philosophy” is said to have been invented by Pythagoras. When he was asked if he was wise (in greek “sophos”), i.e human being passionate to know things. He answered, » I am not a “sophos” but *philosophos* that is to say a lover (*philos*) of wisdom (*Sophia*). From the word *philosophos* the word *philosophy* was derived.

Philosophy, therefore, means love of wisdom in the sense of search for knowledge and with the conduct worth of reasonable being.

The depth sense of philosophy is science: - theoretical wisdom: knowledge: science
- And practical wisdom: conduct, behaviour: integrity

In comparison with other sciences,
- philosophy is not a body of knowledge that is enough to transmit.
- it is not knowledge in its wholeness or theories strongly constructed that would be enough to explain rationally.
- in other disciplines, there is something to learn: in mathematics, logical coherence of the axioms, in physics, in natural sciences, in history, the event in its entirety that one attempts to explain rationally.

Philosophy is an activity of reflection that attempts to retake and verify the knowledge already acquired, in order to discover the foundation that constitutes them.

The hallmark of philosophy is centered in the argument. The major task of philosophy is to analyze and construct arguments.
Philosophers clarify concepts, analyze and test propositions and beliefs. It should result in wiser vision of life in which the impartial use of reason results in appreciation of other viewpoints.

Human mind is characterised fundamentally by the concern for complete and profound knowledge of each and everything that is.

Being conscious or not, a human being undertakes a reflective activity (which is thoroughly philosophical) when he asks himself about the actual knowledge or the action that is undertaking.

Here it is a philosophical activity in its proper sense: A kind of withdrawal or retake of a distance in regard to what one does, says, or produces.

When a knowledgeable person (a scientist) elaborates a new theory of knowledge, he immediately asks himself on its ultimate meaning, or in regard to the entire knowledge.

Hence, there are 3 attitudes that characterises a philosopher

1) **Wonder**: this is astonishment before reality when one discovers that things are different from the way they appear to him.

2) **Doubt**: attitudes that consist in analysing truths considered as evidences or the opinions commonly admitted.

3) **Consciousness of death**: the understanding that man is being doomed to die incites man to reflect on himself, on his existence and on his destiny.

It is also important to distinguish three focuses of interest of philosophical reflection

- Focus on philosophical systems or theories already established.
- Focus on scientific knowledge already constituted
- Focus on personal experience of Human being (the situations, limits failures, death and suffering ...)

Philosophy is a method of thinking, the activity of the mind that takes interest in external world (physical world of the other.) and in internal world of the subject itself whereby the subject is considered itself as the object of the study in order to search for intimate nature or essence of things.

Philosophy also treats the absolute (GOD ) in order to determine his mode of existing that is different from other existing ;being such as humans , living and inanimate beings .
Philosophy embraces the real entirely. But of which manner, how to embrace the real? Here it is issue of method. This method transforms itself in the object of study.

Material object of study of is whatever exists. The formal object of philosophy searches in that real the profound reason of being, the ultimate **why** or the profound cause or **first principle** of things, or beings (inanimate, living and humans), essence or substance.

- In human being: it is the soul
- In the living beings: it is spirit or the vital principle
- In the universe: it is the movement and change
  - Some material elements: FIRE, WATER, AIR
  - God creator and providence
  - The universal mind or the Logos that organises everything

Synthetically, two definitions of philosophy.

**Broad meaning**

Philosophy is an outlook of individual or social world. Each person has knowledge from education or experience, from diverse realities of the world and from himself. He raises questions in relation with practical life or daily conduct. He wants to give an answer to question raised by daily experience. This reflection gives him a certain world view.

**Narrow meaning**

Beyond general sense and confronted to the situations of existence such as death, failure, mistakes, suffering… A Human being asks himself the question of fundamental **why of everything** that is.

1) Philosophy starts with wonder before whatever exists. (Reality)
2) It makes critical analysis of the acquired knowledge
3) It raises the question of foundation of whatever exists
4) It unifies its knowledge in a complete synthesis (philosophical synthesis).
5) It aims, in this sense, at attaining of radical absolute and total knowledge of reality.

**Object of philosophy**

The object of philosophy is the reality in its totality. Reality consists in world, human being, and the absolute (God). Philosophy leaves nothing untreated outside its domain. It deals with whatever is present to our experience, sensible objects, events, ourselves, God…

Philosophy pays much attention to crucial problems of such as nature, existence, human existence, evil, human soul, human freedom…

As in each science, philosophy has **material object and formal object**.

The material object of AG science is the object that science studies in common with other subject (science).

**For instance:** Nature is the material object is common to several sciences.

**Formal object** of a science is a partial or proper object of each science. It is the point of view that a science chooses in order to study it profoundly.

**Biology for example:** studies the aspect of life (living beings) of the entire nature which is its material or common object.

Material object of philosophy takes interest in whatever exists, reality in general. However, in reality philosophy seeks to understand the fundamental causes or first principle which is at the essence of whatever exists (or which makes them to exist) we can say that philosophy strives to know **the why of every thing**: the main reason of the existence of thing in opposition to experimental or positive sciences which deal with **the why of things** but in narrow and limited way.

Treated in this angle of its object, philosophy can be defined as **knowledge of things through their first causes by natural reason**.

**Explanation of this definition**

**knowledge:** it is knowledge through the causes. This knowledge is scientific in the sense that it aims at truth (even though it does not deal with objectivity like in other science).
- **Things (objects)**: these are beings: plants, animals, human beings, events the cosmos and inanimate beings such as stones, rocks and wood.

- **Through the first cause or ultimate** (depending on the point of view where one is placed). Philosophy does not ignore the second cause but there are not its main interest. Philosophy seeks to know the first or ultimate cause of every thing i.e. **fundamental reason of being of all things.**

- **By the light of natural reason:**

  Philosophy uses pure reason or intelligence. It does not use the instrument of observation or the measure in order to get accuracy as in other sciences or faith and revelation like in theology. It instrument is natural reason. Synthetically we can consider 3 definition of philosophy.

  - **As critical reflection:** According to Socrates.
  - **As art of living:** Socrates, Stoics and Epicureans
  - **As absolute knowledge or metaphysic** presocrate; Descartes and Leibniz.

  However, philosophy can also be defined as an attempt of rational, critical and systematic reflection based on Man and his situation in the world.

**3. Method in philosophy**

Contrary to scientific method that consists in observation of facts, in hypotheses and experimentation, philosophical method is essentially reflective. It starts from the object thought and back to the subject. The philosophical reflection is critical.

Philosophy starts with wonder and doubt. It accepts nothing as true or evidence. It reject evidence and opinions.

This reflection is **radical** and **broad**.

**Broad:** philosophy does not deal with particular facts, but it studies the objects globally and universally.

It does not study Jean Pierre, Jean or Claude but it studies a human being not such a tree, animal and tree.

It seeks to grasp the nature of being of human or of plants.
Radical: philosophy goes up to the roots of things in order to discover the foundation or the sense of these things.

**DIVISION OF PHILOSOPHY**

1. Division according to knowledge:
   - Epistemology: deals with the fundamental nature of scientific knowledge and its existential condition
   - Critique of science: attempts to fix the true sense and exact value of these sciences.
   - Formal logic and material logic: it sets the correct use of reason

2. Division according to being: i.e. whatever is it is to the totality of all beings in general by considering each being in the total synthesis.
   - General metaphysics or anthology: studies being as such.
   - Theodicy: studies the being of God

3. Division according to nature:
   - Philosophy of nature: it deals with the fundamental constitution of particular beings that are in the domain of human experience.
   - Cosmology: studies the cosmos or universe.

**CHAPTER ONE: NATURE OF PHILOSOPHY**
The problem treated in this chapter is that knowing the profound meaning of philosophy in opposing it to other modes of knowledge. In fact, it is commonly admitted that philosophy is science. But we ask ourselves: is it very scientific knowledge? And is it very philosophical knowledge?

1. COMMON KNOWLEDGE

Common knowledge is imperfect and superficial knowledge that proceeds hastily without systematic order and control. This kind of knowledge is characterised by:
- Lack of criticism and absence of precision in manner of observing
- Ignorance of precise object of study
- Inability to make plausible (acceptable) hypothesis.

It is knowledge of common. Despite its imperfect feature, common knowledge has great importance because it constitutes the starting point of any kind knowledge. It allows a human being to think about his own problems and solutions.

2. SCIENTIFIC KNOWLEDGE

Science is applied in order to develop the elements of common knowledge. It purifies, improves and brings common knowledge to the high degree of perfection, by proceeding with proper method in search for explanation and science puts common knowledge in logical order.

Science is therefore a body of knowledge, true explanation of reality obtained by methodical procedures and constituted in a coherent system. This kind of knowledge is centered on truth and search for a method; Truth obtained, is found condensed in system in which all elements are logical.

Scientific knowledge is characterised by:
- Critical analysis and precision in manner of observing (method);
- The knowledge of universe and causes of which one is witness (object);
- Ability to make plausible hypothesis (results)

Because of the variety of subjects that it treats of specialisation to which the mind obliges, science has been divided into particular sciences.
A° Mathematical sciences

Mathematical sciences deal formally with quantity and not the nature of their objects. Fundamental mathematical notion are sometimes treated without taking reality into consideration.

EXAMPLE: 2 + 2 = 4; x + x = 2x.

The principles of mathematical sciences are sometimes postulates (assumptions), are verified by their deductive character reveals the laws of deductive reasoning. Deductive reasoning is a form of reasoning that starts from the laws to facts or from principles to cases.

These mathematical sciences consider the objects from the point of view of numbers, their form and position in the space.

Besides mathematical sciences, there are physical, chemistry, zoology, botanic, etc. These sciences are commonly called experimental sciences.

B° Experimental sciences

These sciences base themselves on the data of sensible experience and take strictly empirical character. They deal with observable and sensible phenomena. They reach the formulation of laws by inductive method i.e. a form of reasoning which concludes from facts to laws, from particular cases to principles. This kind of reasoning is opposed to deduction.

There are two methods that help experimental sciences to study phenomena:

Observation: consists attentionally in the observation of phenomena in the way they appear in nature.

Experimentation: consists in making a phenomenon in order to observe it. A scientist can change the conditions in which phenomenon is produced. He must determine the laws. At the end, he must formulate a theory which the summary of all laws.

3. PHILOSOPHICAL KNOWLEDGE
According to what we have already seen concerning positive sciences, we notice that they do not answer all questions that a human being asks himself that, there is, consequently intellectual domain that is not studied by these sciences.

On the other hands, they are only applied in the domain of observable and sensible phenomena. Therefore their object of study is limited.

Thus, it is indispensable to study other aspects of reality. How to explain the existence of beings, life and death, how are matter and soul distinguished? What is their origin and their end? These are problems that surpass positive sciences because they are set beyond the sensible and experience.

It is necessary then to conclude to the existence of knowledge which gives answer to ultimate why that preoccupies human spirit. This knowledge is philosophy. It proceeds with a method and puts the acquired results to systematic order, which gives it scientific character. Philosophy applies itself to natural order referring to nature faculties of knowledge i.e. natural reason (sensible and intellectual knowledge).

Philosophy differs also from religion. The later is based on revelation and faith.

Physical world and its phenomena (object of experimental sciences) constitute equally the object of philosophy.

A human being: composed of body and soul

God is an Absolute Being.

Comparison with particular sciences which deal with class or limited parts of the objects, with the exclusion of others, philosophy is called universal because it deals with universal reality. Its formal object is the search for fundamental reasons of beings. The philosophical reasons (the why of philosophy) are not experimental, but meta-empirical or super sensible.

Conclusion

We can make summary of the notions in the followings terms:

1. Common knowledge or ordinary knowledge has several imperfections
2. Scientific knowledge surpasses the common knowledge, because it provides the accurate and true explanation obtained by method procedures and constituted in a coherent system.
Sciences can search for explanation in order which is strictly experimental and discover the laws that govern these phenomena. This kind of investigation leads to experimental sciences.

Furthermore, science considers the objects only from point of view of quantity. We get then mathematical sciences.

Finally, it is possible to know reality in super sensible manner, and search for the meta-empirical explanations. This is philosophical enquiring or philosophical knowledge.

Philosophy is therefore, knowledge that deals with its objects under a special angle of its deepest cause aiming at reaching the first principle.

4. HUMAN SCIENCES AND PHILOSOPHY

When we talk of human sciences, one thinks generally about sciences of nature: Physics, Chemistry, Astronomy, etc. But there are other sciences that are quite important and whose object is man himself. These sciences are called Human sciences or Sciences of Man or Anthropology in general (History, Sociology, Psychology…)

A. OBJECT OF HUMAN SCIENCES

Human sciences have as their object of study “man” or realities where mental or spiritual activity is manifested and reflected or the facts that attract our interests.

It is Man (human being) as a thinking being, human society and human acts. These sciences give us knowledge about a human being through phenomena that reveal his presence in the world. We can say that there are psychological, historical and social phenomena.

The results (data) of these sciences are statistical. Their laws are rigorous.

These sciences are:
- Psychological sciences: which concern with the psychological or mental phenomena of man.
- Historical sciences: To which we can relate the facts in period of time.
- Geographical sciences: Human, Economic and political geography
- Sociological sciences: To which we can relate the social facts.
- Juridical sciences: Which concern the rules of law.
- Economic sciences: Which concern the economical issues.
- Political sciences: Concern the politics.

**B. DIFFICULT AND LEGITIMACY OF THESE SCIENCES**

The major issue is that of knowing whether one can study man as spirit which constitutes his originality, which makes him subject and no an object, a thinking subject and no a thing among others, endowed with conscience, reason, free-will and freedom.

Nevertheless, a human being is not a pure spirit, he has a complex nature, body and soul joined together i.e. corporeal and spiritual nature. He is in constant relation with the world where he gets external conditions of his concrete existence.

Human sciences are legitimate for three reasons:

Objectivity: There have as their object of study “man” considered through historical, social and psychological facts.

Method: Human sciences have their special method (often the method of sampling and interpretation).

The explanation of these sciences consists in interpretation and comprehension.

Comprehension: Here again we consider, social, historical and psychological facts from within, i.e. in associating these facts to the conscience or human mind.

Generality: Despite the degree of subject and the characteristic of elements of “man” (conscience, free will, reason, freedom, etc.) the human sciences take into consideration the laws that preside to the human facts, but which are not rigorous as in a physical world. These sciences make also abstraction to personal views or ideological references.

**RELATIONSHIP BETWEEN**

There is a great complementarity between philosophy and human sciences. Philosophy has a task of thinking about other sciences and in a special way about the sciences that have a man as their object.

The human sciences give the necessary information about human being to the philosophy while philosophy makes reflection concerns destiny (end of man), reason of being of the world and the existence of God.
CHAP. II. HISTORICO-CRITICAL OVERVIEW OF PHILOSOPHY

The analysis of definition and the object of philosophy are not enough to understand the true nature of philosophy. The overview of his background gives us the complementary elements for understanding more what philosophy is. Thus, we explore the way by which the philosopher thinkers were passed and we see clearly how they treated different questions and the answers correspondent they provided.

I. GREEK PHILOSOPHICAL ANTIQUITY

The Context of birth (origin) of philosophy

The context in which philosophy came into existence in Greece is more or less complex. First of all, Greece was composed of a certain number of colonies, states or small states. These Greek states were democratic states whereby people expressed themselves freely. His freedom was of expression was at the same time freedom of thought. People of these states were not only free from the authorities of states but also free from the gods of these states. Also, Athens was a cosmopolitan city that received people of various cultures. Finally, Athens had since a long time developed other sciences such as geography, Mathematics, Geometry, Astronomy...

Greek philosophy shows us the origin and the evolution of philosophy. This period has three phases.
- The phase of elaboration of philosophy (Presocratics);
- The crisis phase (Sophists);
- The phase of maturity (Plato and Aristotle).

1. The phase of elaboration of philosophy: Presocratics;

Philosophy in real terms begins with Greek philosophers called presocratics. Two major problems attract their attention:
- How t explain the world nature in more rational way;
How to explain change and permanence
The pesocratics make efforts to explain nature using pure reason. They seek to explain how things are permanent through change (or things change and they remain the same). They seek also to explain essential constitution of cosmos. Their explanation comes from sensible
a. Thales of Miletus
According to him, fundamental principle is water, it is very where and can have all forms. Water is according to him, they only principle that exists.
b. Anaximander
Indefinite is the prior principle. It is the former to water and other elements.
c. Anaximenes: Air is the principle or basis of every things. Air is necessary and very subtle, it is takes many forms by dilatation and condensation.

These philosophers are normally called physicists, physiologists or philosophers of physical nature. Because the physis or physical element attracts their attention, they try to give explanation of world by material element that is considered as the basic element or the archè.
d. Heraclitus
For him the reality that exists is change or becoming. He says that every thing changes. Heraclitus is called philosopher of evolution r pure becoming. According to him, everything changes, nothing remains static. His doctrine is called monist materialism and evolutionistic materialism. After the philosophers above there is Parmenides. According to him, reality is unique, there is no change.

CONCLUSION
In relation to what has been said above, philosophy is elaborated in Greece by the thinkers departing from sensible experience. They seek to explain some problems in more rational way in going beyond the mythical explanation based on gods.

SOCRATES (470-399)
He lived in the time of Sophists and he opposes to them and to their arguments. Socrates maintains a categorical opposition to sophists. Sophists claimed to possess
knowledge of everything and they did not believe in truth. Socrates himself professed his own ignorance and he taught people who listened to him with the aim at absolute truth. All his work is a work of conversion. He has dressed philosophical thought and turned reason to truth. They seek for the truth and the good (moral good).

His philosophy concerns a human being, his moral conduct and his search for truth. Socrates abandoned the problem of the physical nature and the deception of Sophists at the benefit of truth. According to him, knowledge has a prerequisite for one’s moral conduct. Hence his motto ‘’know yourself’’. His method to attain truths dialogue and discussion and it is expressed in to insistences

Irony: consists in question that he arises to those who claims to know up to the affirmation of their ignorance. He arises questions considering himself ignorance in order to destroy the apparent knowledge of his interlocutors (the sophists).

Maëeutic: It is a procedure by which Socrates shows the interlocutors that they posses the truth without knowing it. The method also used questions in order to discover the truth that is within an individual without his notice. It is a method delivering the truth by one’s efforts.

His ethics: The teaching ethics of Socrates is conditioned by the knowledge. That’s why his ethics is called moral intellectualism.

He was condemned to death by Athenian authority under the pretext that he corrupted the youth and they offered to him a hemloch poison.

Socrates opened the way to philosophy of man. According to him a human being matters. Socrates is considered to be the father of Western philosophy.

**PHASE OF MATURITY: PLATO AND ARISTLE**

1. **PLATO**

Plato in order to solve a problem of change and permanence , made original thought that there are objects of sensible perception and the objects of thought which do not the same properties.

The objects pf thought: There are ideas; every idea is unique, perfect, eternal and immutable.
The objects of sensible perception: These are concrete objects and particular. They are individuals, multiple and changeable.

Plato makes a distinction of two worlds:

Sensible and material world: is the world of sensible and changeable objects. It is the world known by our senses. It is shadow or a representation of the real world.

World of ideas or ideal world: It is the perfect world. This the world recognised by the intelligence. This is the veritable world that our reason knows whereas sensible world is its representation, an efficient reproduction of ideal reality. It is the shadow project in space.

A human being belongs to the two worlds. He is composed of two substances: the soul and the body. The body is considered as a material thing or prison of the soul. Plato explains all reality through that distinction of material thing and the spiritual reality and two worlds that are different and separated. That explains the dualism of Plato.

The dualism: is defined as a system or doctrine that admits two principles that are irreductible.

The idealism: is a system or a doctrine that brings being to thought and things are nothing than the mind.

ARISTLE (385-322)

Was a disciple of Plato.

His philosophy

Although Aristotle was a disciple of Plato, his philosophy is more or less opposed to the philosophy of Plato who is his master. He rejects first the doctrine of the existence of two worlds. According to him, the sensible world is real. His philosophy is opposed to platonic idealism and appears as a form of realism. Knowledge is not a reminiscence of innate ideas but it is the conclusion of the intelligence effort which attempts to understand the world to classify the objects and make hierarchy of
common properties of individuals. Aristotle is the father of Logic or “ORGANON” and metaphysics. The concern to explain change and permanence helped Aristotle to distinguish the “coprincipes” or “coprinciples”: form and matter, act and potency, substance and accident and the 4 causes and the Immovable being mover.

The coprinciples
These are the principles considered in couple by which Aristotle used in order to distinguish the problem of change and permanence.

1. Matter and Form

Matter: is the principle of radical determinability to being. It is by means of that being realises the intention. It is substratum of object.

Form: This is what gives the determination to being. It is the intention.

Act and potency

Act: is the definite realisation or actual state of something.

E.g. This is the table in act.

Potency: It is a state that being tendsto become, possibility to become another thing.

E.g. This wood is a table in potency.

Substance and Accident

Substance: is a nature or essence of being that is stable.

Accident: is that which changes in the being.

PHILOSOPHY IN MIDDLE AGES (Medieval period)

The problematic of meddle ages

The encounter of philosophy with Christianism raised many questions. How to concile philosophy and Christianism, how to concile reason and faith?

For religion it was necessary to put philosophy at the service of theology and for philosophy it was necessary t explain rationally the matter of faith and THE reality of dogmas.
PHILOSOPHY IN MODERN PERIOD
Several events precipitated the decline of medieval culture preparing modern spirit (mind).
- The conquest of Constantinople by Turkish Muslims (1453). The Greek thinkers migrated to Italy and spread the manuscripts of the Greek thinkers. This is the starting point of humanism and Renaissance.
- Protestant Reform which challenged the great historical church of Rome (Catholic Church).
- Great geographic discoveries and other numerous scientific discoveries;
- Economic growth with use of money and development of industry.

THE PROBLEMATIC OF PERIOD
The great scientific discoveries and geographic technical development during middle ages end with a new orientation in the domain of thought. Beside these discoveries, Renaissance trend which arrives at humanism gives a new meaning to human being as a subject worth of great consideration.
This proliferation of the doctrines and the new ideas gave birth to two opposed doctrines in modern period: rationalism and empirism.

The underlying characteristic of this period is specifically the remarkable interest to science. And the issue of this period is the problem of knowledge or epistemological problem. The philosophers ask about themselves about the world and the object of knowledge.
What do we know? And How do we know?
The philosophy of modern period is the “Epistemology”.
The philosophy of modern time becomes therefore epistemology i.e the critical reflection about the value and the significance of sciences already constituted. In this search to answer to this epistemological issue (question of sciences) René Descartes reflects about philosophy and sciences in order to find the solid foundation of human knowledge.

THE REPRESENTIVE PHILOSOPHERS
On one part, there are representatives for rationalism and on the other hand those of empiricism. We can say that these two philosophical doctrines are opposed in their understanding of reality.

Rationalist representatives.
Rationalism holds that the reality that exists is the one that is recognised by our reason. In other words, it is the reason that allows us to know. Whereas empiricism believes that we know things by the help of our sensible experience. These are actually two modes of knowledge that some people oppose but which attempt to reconcile.

The main representatives of rationalism are the following:
- René Descartes
- Immanuel Kant
- Baruch Spinoza
- Malebranche
- Leibniz

RENE DESCARTES
René Descartes is a French philosopher of modern period. He introduced critical philosophy based on doubt called “methodical doubt”. His philosophy can be summarised in 4 main points

1. Universal doubt
Descartes notices that in philosophy every thing is questionable (debatable). He prefers to put all knowledge and truth to doubt.

2. **Fundamental Truth**

René Descartes considers the truth “I think therefore I am” or “Cogito ergo sum” as a fundamental truth and takes it to be basis for his thought or his philosophical system. According to him, this truth is the conscience that constitutes the indubitable truth.

3. **Universal method**

This method must be applied to every thought in order that it be well conceived and well constructed. It consists in evidence, analysis, synthesis and complete enumeration.

In summary, I think therefore I am or Cogito ergo sum the foundation of cartesianism philosophical thought while the doubt is its origin.

René Descartes applied to this thought mathematical method of deduction.

He says that all the ideas are born (innate) innatism.

He accepts also dualism i.e that a human being has a body and soul, united by chance. He compares a human body to the machine. The body considered as a machine functions independently of the soul which possesses the innate ideas. In other words, the ideas do not come from the senses but we are born with them.

His thought turns around in a vicious circle, the doubt helps him to discover his consciousness and finally the consciousness destroys or confirms what the doubt had reflected.

René Descartes made a very important systematic synthesis of his period. He has also put to an end with his doubt, all sorts of dogmatism of medieval period. He has also introduced clearly the critical mind in thought.

René Descartes is the father of analytic geometry (which attempts to solve with algebra, the problem of geometry).

**IV. PHILOSOPHY IN CONTEMPORARY PERIOD**

Philosophy of this period retakes the problems that were raised during different previous periods (antiquity, middle ages and modern period) in order to synthesize them. This
period is also called **period of great systems**. The main themes of this period are: liberty, life, consciousness, etc.

These systems are multiplied and diversified taking as the **conscience, existence, life** and **human activity, society** and power... Brief this period is characterised by the pluralism of systems.

In fact, the review of the problems of the previous periods emphasized particularly the epistemological problem. This problem gives rise to opposition between positive sciences and philosophy specifically metaphysics (which studies being in general)

The positive science claims to discover a method capable to show truth (**the hole reality**). This scientific conception is opposed to idealism, which, thinks that reality is a construction or an image that the subject has of the object.

Concerning method, that of Edmond Husserl of phenomenology is quite known. It is a method and a recent philosophy considered as being capable to explain philosophically how the subject knows the object (the relation of the subject to the intelligible object).

**1. THE THEME OF LIFE**

This theme has been studied by many philosophers. Let us examine the points of view of Arthur Schopenhauer, Frederic Nietzsche and of Henri Bergson.

**1. Arthur Schopenhauer** / German philosopher (1788-1860).

Arthur Schopenhauer analyses the theme of life starting from the lower degree to high degree of beings.

According to him, life is a central element (Fundamental principle), **the will or will-to-live**. This universal will –to live is common to different beings. It begins with material beings (or the beings without life). It is the inferior degree where the will –to live is manifested.
This goes up to the living beings (plants and animals) and it is achieved to a human being that constitutes the highest degree of the will. This will is first of all blind or unconscious. It will or conscience to human being. According to him, it manifests itself as intelligence which helps us to know other beings. This consciousness of man is the consciousness of suffering where in us the lack and satisfaction follow each other without stopping and creates anxiety. A human life, he says, is characterised by the desire or efforts resulting from the lack. This privation or lack causes suffering and when man is satisfied he gets anxiety. Hence, his conclusion, that human life is a \textit{permanent mourning}”, because it is characterized by a succession of the desire and trouble.

\textbf{2. Frederic Nietzsche: German philosopher (1844-1900)}

Nietzsche discovers like central point of its thought the life. Its philosophy and its morals have as a center the life. This life is characterized by the \textit{will-to-power}. Nietzsche does not extend the \textit{will-to-power} to all the material or alive beings, but to the man alone. A human being according to Nietzsche is characterized by the force of the will which motivates him to act. This is a kind of instinct or impulse which pushes man to transcend himself and to tend towards his ideal. Man departs from itself (with his weaknesses) and tends towards the Super-man who is the most strong man, characterized by the will to power which pushes him to struggle, to fight and to the selflessness. This will, according Nietzsche can be compared with the will-to-power according Schopenhauer or to life force of Bergson.

This will-t- power, according to Nietzsche allows man to fulfill himself passing in three stages: camel stage, lion stage and child stage.

\textbf{1º The Camel:} is docile and flexible. It accepts everything without reactin.

\textbf{2º The Lion:} is furious and fierce and reacts energetically to it enemy. It is characterized by the force of character and of destruction when it is necessary. It never bears to be crushed.
3° **The child:** is the creator and inventor and he is capable to build something from the new. These various phases concern to the man and the humanity which needs to invent new values morals, scientists, nuns, etc. According to Nietzsche, Western ethics is to be invented because that existing old and is exceeded.


H. Bergson develops the philosophy of the life in his work “the creative evolution”. Its thesis confirms its point of view of the evolution of the beings or the evolution of the life. His central thesis concerns the life and the principle or the life force. According to Henri Bergson, the living species have progressed up to their actual and recent forms. This life force which stimulates this evolution started to distribute itself in the matter. He says that the life is a continuation of the life force which diversified itself according to the various forms of beings: material beings, living animals and humans. This vital force is a conscience which was achieved with the degree raised in the man in the form of the intelligence or the intuition. In the animals this conscience took the form of the instinct. The evolution of the species needs time in order to get fulfilled.

**2. The topic of the conscience**

Various expressions are used to express the reality of the conscience: “national conscience”, “bad conscience”, “to become consciousness”. The conscience the is interior and intimate space of the human subject. There are two directions of the conscience:

- Moral: aims at the moral value of the action or the moral conduct of the human being.
- Psychological: immediate knowledge of oneself and of things. It is intuition that the mind possesses of its states and its acts. All the philosophers who studied the man touched the aspect of the conscience: Rene Descartes, J.P. Sartre, Bergson, in brief, all the rationalists in particular were interested in the problem of the conscience.

Field of the conscience is:

- oneself: self-awareness,
- object: conscience of the object.
The awareness constitutes the foundation of the attitude of the man because he achieves at distance every event, every situation which opens the possibility of any judgment and criticism. The philosophical conscience gives place to lucidity comprehension and the mastering of the existence.

Maine of Biran (18th BC.) was interested particularly in the problem of ego or the conscience in 20th S. - Whereas E. Husserl, dealing with the problem of the consciousness of the subject, started a phenomenological philosophy.

**Sigmund Freud and its theory of the unconscious one**

**Introduction**

Sigmund Freud (1856-1939) was born in Moravie (Republic of Czech) in an Jewish family. He studied biology and did his research on the nervous system of vertebra of nervous system, precisely the anatomy and the pathology of the nervous system. He is opposes himself to he view that whatever is psychic is conscious (known by the subject). He says that there are acts which the human poses and of which he ignored neither origin nor how to explain them. He thinks that there is a psychic area ignored by our conscience that called the Unconscious or the reserve of the forces which are not known and not mastered, produced by the process of repression of the tendencies.

The inhibited tendencies or feelings repressed do not disappear, says Freud. They are repressed in our psychic area (in the unconscious one) and are at the origin of our not controlled acts (lapse, illusion, etc), or other abnormal mental acts, controlled feelings our, acts of thinking, etc The discovery of unconscious was the basis of Psychoanalysis.

**Synthesis of the freudian psychoanalysis**

The thought of Freud is summarized in two classifications called “topics”. He distinguishes the first and the second topic. The first topic distinguishes three functional psychic entities.

- **The conscious**: is the sphere of the conscience characterized by mechanisms known by the human subject.
• Preconscious or subconscious: is the domain of remembrances or other psychic elements unconscious but likely to return on the surface of the conscience.

• The unconscious: It is a psychic field dominated by drives unknown by the conscience (of the unconscious mechanisms) resulting from mechanism of repression. It is a very complex psychic area in the Freudian psychoanalysis.

The second topic includes or classification:

• Id (or Ca): characterized by the primitive needs and instincts of nature of the human. This sphere of the conscience includes the instinct of life and death. It is dominated by the principle of the pleasure and requires immediate and absolute satisfaction without taking account of external or social reality.

• Ego: is the psychic instance (like authority) or a mechanism which consists in establishing a balance between id and external reality. It obeys the principle of reality. Let us take for example, at a person instead of satisfying her emotional or sexual impulses according to their intensity, he/she attempts to hold them by taking into consideration the social context, the moral norms or the physical conditions. This person arrives at this because of the EGO.

Super-Ego: is a mental representation of the parental authority, educative, etc. in the mind of the child. They are also the normative representations (ethics, judicial representation or religious, etc) of the adult person within the society. This representation in the mind of the child has a character of idealization or an excess of valorization of the model of the adult (parent, teacher, a neighbor person) to whom the child identifies himself.

• The central element that Freud develops is that of the unconscious. According to him, the unconscious is a psychic area characterized by unconscious mechanisms which are at the basis of certain conduct of our actions and of our thoughts. This psychic authority originates in the tendencies or the needs which, by the fact that they were not satisfied, are not erased or did not disappear from our psychic field. They are rather returned in a psychic sphere which escapes control from the conscience. The impulses or tendencies that are accumulated in this unconscious area can hardly reach the conscience. They can, the many times appear to the surface of the conscious, under a disguised form (slip of
tongue and slip of pen). These unconscious mechanisms cause the mental illness such as the neurosis.

According to Freud, the field of unconscious are principally as its origin the existence of the libido (sexual impulses non satisfied during the infancy phase). Libido occupies, according to him, a central place in the psychic life of the human. In the great part, he affirms that the psychic domain is dominated by the sexual instinct and the repressed tendencies which are essentially of sexual origin.

This is the key point of the opposition between the psychoanalysis of Freud and that of his disciple Jung, who finds it as an exaggeration of the great extent. In the psychic area, Freud gives to sexuality a great consideration seeing it as a variable determination in the psychic constitution, more especially in the unconscious psychic sphere. Jung judges more omnipresent the libido in the Freudian system. And thereby he dissociates the libido from sexuality considering that the libido is broader than sexuality. According to him, the libido is a vital energy that is both somatic and psychic. The libido transforms itself qualitatively in the course of existence.

Sigmund Freud is considered to be the father of the psychoanalysis. The latter is not always considered as a science on the same level of other sciences. It does not constitute less of it less fundamental upheaval of traditional conception of psychology. Basing on psychoanalysis, it becomes impossible to define the consciousness as a capacity of self-control or admitting the opposition between the normal state and the pathological one. If it is necessary to recognize that the unconscious which directs in a discrete manner, the psychic activity, it is thus a question of the sense of our conduct, and again of our freedom which is an important issue.

3. The topic of the existence

In the course of last decades, a new centre of perspective has been chosen by a group number of philosophers, i.e, that of the existence. In occurrence, this term does not mean formally what characterizes the whole reality, as real or what is common to all reality, but it means properly human reality, the mode of being which characterizes the human being and who distinguishes him from other kind of reality, (material or living).
The initiator of the existentialism is Danish Soren **KIERKAGAARD** (1813-1855). This latter reacts against rationalism and develops his philosophy of the existence using Christian religion.

We distinguish 2 forms from existentialism

- **Christian**: Karl Jaspers and Gabriel Marcel
- **Atheistic**: Martin Heidegger and J. Paul Sartre.

The principle of the philosophy of the existence: *the free choice of one’s destiny and the accent put on the human freedom as the motive of the acts and the choices of the man*.

1. **Heidegger**: Our conscious manifests in 2 forms:
   - Authentic: when the philosopher gets the awareness of his freedom and must choose his destiny (essence). This causes him anguish
   - Unauthentic: Human beings who avoid choice of their destiny, who try to escape from their responsibility, and take refuge in the common opinion of all beliefs, their rules of life, their purpose in one avoid their consciousness, conforms itself to what one thinks, does or judges in social environment. This is the category of others (people) opposed to I.

2. **J.P. Sartre**:
   - Distinction of being in itself: things or objects which do not have consciousness (conscience). From:
   - The being for-itself: A human being endowed with reason and conscience. This being creates itself, perfects itself and He is his own project.
   He realizes or fulfils himself.
   He is beyond what it is.
   He fulfils himself because of his freedom
   There is no God who that determines his gasoline (essence). It is through his existence that man determines his gasoline. Sartre speaks about death which is understanding as a destruction of the existence and which puts an end to the human existence.

**Form Christian or the Christian existentialism**

It was developed by the philosophers Gabriel Marcel (French philosopher) and Karl Jaspers (German philosopher)
- **Gabriel Marcel**: Understands existence as a mystery non explainable by the human reason. He opposes the mystery to the problem. The mystery concerns the human existence in which the man is implied whereas the problem concerns the external world which requires a positive solution. He is also interested in the faith which he explains by the fidelity of the man to the Supreme Being (God). He speaks about dead a going out or entrance in a new life an ( crowned by everlasting happiness).

- **Karl Jaspers**: He underlines the aspect of the communication and the transcendence. The human being, according to Jaspers is not isolated. He lives in relationship with whom He is fulfilled. These relations are expressed in communication where man communicates to his fellow in reciprocal manner. But also, realized trough the transcendence trough the tension towards what is Absolute other, which exceeds the human. It is about a going beyond of the man to resemble ( to be in communion) to God in the faith.

**Conclusion**

The summary of the history of philosophy helped us to understand philosophy considering the different periods of the history. This historical approach also allowed us to discover the birth of philosophy, its evolution and a certain level, its recent concern.

Besides, Philosophy, considered as a mode of thinking, is not limited to one area of knowledge. It opens the inter disciplinarity (it is opened to treasures from different horizons of knowledge).

Philosophy deals with its object of study considering the philosophical requirements of radically, criticism and universality of the discourse which verifies the evidences, prejudices and opinions.
We have already briefly seen that are the major issues to which philosophy is to give answers. It is important now to precise its field of study grouping in these different problems.

**The problem of knowledge**

This problem was particularly posed in the modern period with the rationalists and empiricists before them. It was again raised at the beginning of contemporary philosophy especially in the 19th century; considered as the transition of modern and contemporary period.

The search for knowledge has constituted the object of study of common knowledge, scientific but also philosophical knowledge. Common man in his own manner, seeks to explain reality. Thinkers, going beyond common man, strive also to give the explanation of reality, but the questions remain:

- How do all those different kinds of knowledge reach reality?
- What does to know mean?
- What is the value of knowledge?
- What constitutes the view of all?

From the pre-Socratic, the thinkers sought to give explanation of reality. Scientists in the domain of positive sciences gave explanation more or less satisfying of the objective reality. But, at the same time, the field of reality (even the objective) escapes from them. The history of thought tells us that the skeptics hold that a human being is unable to reach reality and that it is necessary to avoid making the assumptions anyhow and even that one should doubt everything. In fact, knowledge is not absolute. It is the knowledge of the subject and hence relative.

Our knowledge is permeated by the subjective elements. Reality does not appear to us as it is but the way we see it. There is therefore a subjective aspect in our knowledge and
even in certain measure; knowledge is the representation of the subject. This knowledge excludes total or absolute truth.

On the other hand, there is a problem of distinguishing what is truth and what is opinion, what is error and what is truth. These multiple difficulties show us how it is necessary to carefully treat the problem of knowledge in order to give to human knowledge a firm foundation.

**The problem of being or of whole**

The word ‘whole’ means whatever is. It is the totality of being including each being particularly. We know that philosophy aims at studying everything. Contrary to experimental science which divides reality, philosophy wants to embrace the reality in its totality as a whole.

This claim meets several difficulties: How can we arrive at such synthesis? We can unify several beings finding their common aspect. Thus, in order to present and to unify Peter, Paul and John we say ‘human being’. We can also gather the beings under the aspect of being because all things that form the universe are in the existence. The world is one under the aspect of being. But one should not forget the evidence of diversity of things.

- What is the inner constitution of reality?
- The analysis of the criteria of this reality raises questions of the origin.
- Is the world eternal or created?
- If it is finite, limited or imperfect, does it suffice itself in order to get explained by itself, or must one admit the existence of infinite reality in perfection which would produce the less perfect being?
- What are the attributes that reason can give to divine Being?
- How did he produce the world?

**The problem of nature and of life**
All things that surround a human being constitute nature. It poses to our mind many problems. We can give the major problems among others:

**Change:** It is the visible and universal in nature. Philosophers call movement all forms of change, so one would ask himself the following question ‘what is that movement? Some changes take place in the substance of bodies. How is this possible? One would then search what is the substance of being itself.

On the other hand, all bodies are bound in the time and space. one would therefore search for the objectivity of the time and space.

But there are also interesting beings w\and which seem to be superior to all others. There are the living beings beginning with the most humble microbes up to human organism. They have life principle which is the soul. One then may search to know what life is. Why is that in the categories of living beings are some differences? Why are livings vegetables different from the living animals? Why is the animal different from living human being?

**The problem of man and freedom of a person**

The privileged living being among corporeal beings is a human being. He constitutes his own world and we know ourselves because of our consciousness. The study of a human being causes my questions. First of all, what is the true nature of a human being? The operations of man that is the thought and free will are attributed to the faculty of the soul. Then one can ask himself whether a human being is composed of the matter and the soul and their link as well as their relationship.

Does the soul govern the body or it is the inverse? Where do ideas come from? What is the relationship between sensible and intellectual knowledge?

A human being has affective phenomena called feelings or passions. What are they? What is the role of knowledge for a human being? A human being is endowed with freedom but what does freedom mean? IS freedom limited or unlimited? He has also a
consciousness. What is it? Several questions about a human being attracted the attention of many philosophers especially of contemporary philosophy.

*The problem of value and of morality*

Philosophers attempt to know the criteria of appreciation of moral value. In fact, all people do not attribute the same value to things but all believe in the order of values. They distinguish biological, aesthetic, moral and religious values.

What is actually value?

Happiness is value, but what is happiness? What the highest good for a human being? In virtue of which criteria do we distinguish the good from wrong actions? The problem of values shows that these values vary according to individuals, societies and periods. But philosophers want to discover their foundation.
CHAP. VI GREAT DOCTRINES OF PHILOSOPHY

Philosophical doctrines are an effort made by philosophers in order to answer the following questions:

- What does exist really?
- What can be known truly?

This is the problem of being and of knowledge. The first question is on the ontological issue (on being) whereas the second is on the epistemological issue (on the knowledge of the object). The effort to respond to these two questions gave birth to different doctrines of philosophical thought.

**Idealism**

The first doctrine (the most ancient) initiated by the ancient philosopher Plato is called Idealism. This doctrine privileges as true the object that exists. According to Plato, sensible object (visible) is not real because it changes. What are real is the idea and the world of ideas (which resembles it). The Idea is universal and eternal mode of things. They never change. According to idealism, the idea has an independent existence in relation to the visible object.

Consequence of this doctrine is that sensible has neither ontological nor the epistemological value, that is our bodies and this visible world. A human being becomes spiritual and his body is an object to neglect. This doctrine considers a human being to be merely the soul.

**Spiritualism**

This is also the doctrine of thought that considers a human being as composed of two elements the soul and the body and put the emphasis on the soul. It is close to the idealism. For Hegel, there exists a universal spirit which is the basis of evolution through history. For spiritualism, essential element of a human being is the soul. The doctrine is inheritance of christianism.

**Consequence**

- One must take care of the soul than the body.
Supposition of the eternity (immortality) of the soul that is the continuity hence the conception of the world to come which will allow the soul to continue to exist.

**Materialism**

It is a philosophical doctrine opposed to spiritualism and idealism. For materialism, what exists in the concrete sense is the matter i.e the concrete and visible object. This doctrine is opposed to the belief of the soul as the essential element. This doctrine began with the ancient philosophers (Leucippius, Democritus and Empedocles), but was deepened by the modern and contemporary philosophers such as Karl Marx, Feurbach…

This doctrine was developed in modern contemporary period. According to Feurbach, there are not the ideas that govern the world (politics, science, religion). These are the mere product of human consciousness (linked with the brain). For him the idea of God can be explained from the point of view of a human being (it is the human being that invented God).

**Karl Marx and his historical materialism**

Karl Marx is a philosopher of 19th century (1818-1883) born in the Jewish family. Being a philosopher by formation (doctor in philosophy) he became a journalist and then involved in social action in Europe with the concern of changing the society of his period. He came up with the elaboration of communism. His philosophical system is Marxism while he belongs to the doctrine of materialism. Karl Marx applies materialism to human society more precisely to the economic organization of his society.

According to him, what is real is not the universal spirit as Hegel says, but the matter. Even life is nothing but the product of matter and intelligence also is nothing but the product of the mind and historical conditions in which human beings live.

It is not the consciousness (spirit) that guides human beings or determines their existence but it is their social existence that determines their consciousness or their spirit. That is why he explains what he calls infrastructure and superstructure.

**-Infrastructure**: It is the totality of the material and economic conditions which surround a human being.
- **Superstructure:** There are the ideas, politics, religions, laws, science ethics which condition a human conduct (behaviour).

According to Karl Marx there are the material and economic conditions which determine the conduct of human beings or societies. Human beings conduct themselves according to their belongings or properties.

Extending this to society precisely his, he distinguished two classes: Proletariat (the class of proletarian) or the basic class made of workers and the class of the bourgeois made of the rich who dominate and possess the great means of production (factories, farms enterprises…).

This distinction of classes, a result of capitalism, is a social reality. With the history, this situation will grow. The workers make a class of proletarian and working for the bourgeois’ account, they will get the experience of work and with this experience (not by force) will get the capital of bourgeois. Given the fact that they are the majority, they will get properties and the bourgeois will lose (their capital will reduce) because of lacking the workers.

Then there will be equilibrium in the society; the abolition of the classes. This is communism or the classless society. Everyone will have to satisfy himself to the measure of his needs. This is a great evening therefore communism.

As Hegel, Marx affronts the primordial paradox of the soul and the matter. Whereas Hegel solves it this paradox making matter the obedient slave of the spirit (soul), Marx chooses the contrary solution. According to him, all is matter; the spirit is nothing than the abstract created by a human being. For him it is the matter that imposes its laws to the spirit.

**Criticism of materialism**

- There not merely material conditions that guide humans or determine their behaviour, there is another element; the consciousness or the mind.
- The classless society is utopia (dream) it did not exist up to today.
- The distance can reduce without disappearing.
**Rationalism**
It is a philosophical doctrine of thought which answers the question ‘what do we know really?’. It originates from the modern period especially with René Descartes (1596-1650). According to rationalists (Réné Descartes, Hegel, Kant) Reason helps us to know abstract things (beings) or ideas. According to them true knowledge is the one provided by reason (spiritual or abstract faculty of a human being). This knowledge is rational intelligence.

**Consequence**
- what is not real is not intelligible, therefore it is unreal. Concerning a human being, what is important is the soul not his body.

**Empiricism**
It is also a doctrine that answers the question ‘what do we know truly?’. According to this doctrine, what is known is only what is concrete and sensible.

**Consequences**
- What is spiritual can not be known (God, spirits, angels… the spiritual world of Plato and of the Christian does not exist according to empiricists.
- The intelligence is nothing but developed activity of the brain (mind). This doctrine gives birth to positivism, materialism and it has inspired science.

**Positivism**
It is a philosophical doctrine of contemporary philosophy. It was founded by Auguste Comte (a thinker and a French philosopher of 20th century). According to him the unique way of knowledge is a scientific way (that is the knowledge by observation and experimentation).

The rational way or the knowledge by reason is not true. For him, what is physical, scientifically observable (scientifically studied) is the real. He extends this thought to society and considers it as physical reality which should be studied from the physical point of view.

He distinguishes three stages through which humanity (or the individual) has passed in his growth.
- **Theological state:** Humanity explains things from God’s point of view.

- **Metaphysical state:** A human being explains things using abstract or metaphysical principles of reality.

- **Positive state:** true explanation of the world and things. The man of science explains things by scientific laws which are true laws. This constitutes the accomplishment of human history which is perfect.

**Criticism**

- Society can not reduce itself to physical reality and social facts do not obey the natural laws.
- Society, being what it is, is made up of human elements. Its laws are unpredictable. One should use another adequate method in order to study social reality.

**Existentialism**

It is a doctrine that tries to explain human concrete existence. That is the existence situated in the real and historical conditions (a human being suffers, fails and dies) but not the abstract human being. We distinguish two orientations:

- **Atheistic existentialism:** with Jean Paul Sartre (French) and Martin Heidegger (German) as the outstanding figures.
- **Christian existentialism:** with Kierkegaard (Danish), Gabriel Marcel (French) and Karl Jaspers (German).

**Personalism**

This philosophical doctrine explains a human being as a person and a member of society. Human person is seen as a being which entertains multiple relationships (with God, with others, and with the society).

A human being is also a person with threelfold relation:
- With another
- With himself
- With God
**Phenomenology**

It is a philosophical doctrine that attempts to give explanation of things as phenomena which appear to as such. It was initiated by a German philosopher Edmund Husserl. It is as the same time a doctrine and a method. It is an attempt to reconcile idealism and empiricism. On one hand, it is a reaction against idealism and rationalism and on the other hand it a reaction against scientism.

There are two forms of phenomenology: We distinguish two orientations: That of Edmund Husserl and that of Martin Heidegger. Phenomenological orientation of Edmund Husserl is called transcendental while that of Martin is existential phenomenology.

**Husserlian phenomenology or the transcendental phenomenology**

Husserl is the initiator of contemporary philosophy. This doctrine is famous today and illustrative debate between philosophy and modern science. But we can say that this doctrine has had an evolution with the post-Husserlian philosophers such as Martin Heidegger, Merleau Ponty and Michel Henri.

The domination of phenomenology expresses the need to abstain from all quick interpretation of the world and go back in avoiding all forms of prejudices towards what appears to the consciousness.

The aim of Husserlis is to found, by means of phenomenological method, philosophy as a rigorous science. He underlines in his phenomenological thought:

- Intentionality of consciousness: The specific that the phenomena bringing themselves to consciousness. Consciousness is always consciousness of something.
- The couple noese-noeme. The noese is the act of the target and the noeme is the object targeted or the intentional object. There is according to Husserl a correlation between these two elements.
- Phenomenological reduction: The fact of abstaining from any kind of prejudice. According to him it is this attitude that characterizes us naturally. This reduction is epochè (putting into practice)
- Eidetic reduction: These are fundamental laws linked to the essences lived or non particular lived (experienced).

Phenomenology of Husserl shows that the object is in the consciousness of the subject as an intention that is ‘the intentionality of the consciousnesses. The consciousness is always the consciousnesses of something. There has never been a close consciousness as Descartes affirms in the Cogito.

*Enlightenment Doctrine*

As its name indicates is a philosophical doctrine elaborated during the enlightenment century which followed medieval period and which prepared modern mind by its new and diverse ideas: philosophical, revolutionary, romantic and scientific.

First of all, this doctrine takes its origin from naturalism; a philosophical doctrine and a state of the mind which supposes the remarkable influence of biological life to moral life and explains the development of society by means of laws of nature (climatic conditions, biological peculiarity racial….)

The naturalistic conception of life which is the proper characteristic of this doctrine provokes a deep transformation of western mentality of this period. We recognize the independence of thought vis-à-vis religion and the Church.

The idea of autonomy and freedom of individual or society develop and the priority in comparison with the problem of knowledge. On the moral aspect, they admit innate moral sense that is the ethics founded on the natural law. The outstanding figure especially Voltaire, Montesquieu, J.J.Rousseau hold that God is the creator of natural order but he does not intervene in the order he created. They preach natural religion which respects the feeling of a human being.

In addition to naturalism, the thinkers of this period are inspired by English empiricist thought. This enlightenment doctrine gave birth to French revolution in 1789. This revolution was based on freedom, equality and brotherhood.

*Ethical doctrines or Doctrines of moral inspiration*
Stoicism

Stoicism was founded by Zeno of Citium in Greece (36-264). It is defined as the ethics of an effort of necessary tension in order to attain the highest good (happiness) placed exclusively in life according to reasonable nature. Their principle is rule of conduct according to nature according to the world.

The conception of God: intelligent or organizer or reason generator in the order of beauty and goodness. His principle attribute is Providence.

Pantheistic conception: God exists in the world as bodies (compenetration). But he manifests himself by the aspect of the order of perfection. According to then in the wholeness God is a body.

Conception of happiness: To have a clear conscience and convinced that happiness is to understand and will it.

Ethics: One should live according to virtue: This is a free and spontaneous acceptation of all the elements of life. Virtue tends towards God (logos). It is life of reason whereas passions are vice disorder and the sickness of the soul.

According to stoics the wise is the one who judges according to virtue and knows how to dominate life and passions. They advocate for absolute impassiveness.

Epicureanism

This is a doctrine founded by Epicurus. Epicureanism is an ethics which put happiness in pleasure. For Epicurus, it is only the pleasure of eating and drinking. It is a sensible pleasure (opposed to stoicism which accepts happiness according to reason).

Moral conception

The highest good according to epicureans is the pleasure, because there are no other ends able to make us happy.

As stoics, happiness is living completely in peace whereby everyone can become happy. The sign of pleasure is the absence of pain.

Fears
- **Death**: The soul, the body and atom must disappear.
- **gods**: They are of human nature and they have not created and therefore can not intervene in human life.
- **Ethics**: Life according to virtue.
- **Virtue**: Prudence, temperance, justice and friendship.
- **Prudence**: Pleasure at break, the stable enjoyment hence acceptance of pain.

Epicureans invite a human being to make an effort in order to organize his entire life for attaining peace and happiness.

**Skepticism**:

**The founder: Pyrrhon (365-275)**

Skepticism is a doctrine which, in admitting the existence of truth as a subjective fact, declares the impossibility of objective value of every speculative judgment and teaches consequently the impossibility of attaining in absolute sense the infallible certitude.

**Ethics**

- Happiness according to an ideal life.
- Suspend all judgment.
- Surrender to calm passivity hence peace of the soul.
Contrary to western philosophy, African philosophy (a way of thinking) developed in Africa during colonial time (in the earlier independence) and after African colonization. It has as the representative all the African thinkers who aimed at developing a philosophical reflection which inspires specifically the African data of culture but also other issues such as development, democracy or governance, liberation, poverty, ethics, conflict resolution….

I. Its origin

Africa philosophy takes its origin from the preceding period of the independences. On one side, African philosophy is seen as a movement of thought that claims for the recognition of humanity of the black man and the independence of Africa. On the other hand, it is seen as a political ideology which claims for liberation of Africa in all points of view such as political, economical, social cultural, religious, artistic,…

This philosophy begins actually with the publication of the work of Reverend Placide Tempels entitled ‘Bantu philosophy’. This work raised multiple points of view. Africans got in this publication the departing point of their revendication. The Westerners took it to be an aberration in the domain of thought, first of all, as a system of thought or world view proper to Africans. It is a traditional African philosophy. This has existed before the contact of Africa and West.

Then as Contemporary African philosophy or philosophy strictly speaking which begins in the previous evening of African independence especially from the publication of Bantu philosophy of Placide Tempels.

Traditional African Philosophy

As Reverend Mulago tells us in a Congolese expression, ‘Philosophy of Muntu as his entire life is religious and his religion is a lived philosophy'.
This means that in traditional African philosophy conception, these three elements are intimately linked to life, reflection and religion. We notice that the element of foundation is life which conditions the thought and religion. The concern to maintain oneself in life pushes traditional African to think about the reasons or means which can prolong or shorten life.

That is why traditional African appeals himself to material or vegetable force, even animal in order to be strengthened or protected against harmful forces that can hurt his life.

But, given the fact that these forces are organized hierarchically, he appeals to supreme force which is able to annihilate other forces. This supreme force implies God. The good relationships condition God’s attitude towards a human being. This explains the sense of sacrifice, of morality and other taboos which enhance social order and good relationship with God.

**African concept of God**

The African concept of God is manifested through the names given to God and through the expressions of the beliefs of an African.

**Different meaning given to God (Imana)**

a) **According to the Bantu conception in general**

1. God is the primary source of all life and all vital means. God is the giver and the protector of life as well as of the vital force.

2. God is transcendent: He is the Supreme Being which is not included in the categories of other beings. He is not in the category of NTU: being.

3. God is providence: God is the creator and continues to take care of the creatures. He takes care of human life and the running of the world in general.

4. God is the father: He begets and nurtures and he loves his children.

5. God is immaterial: (he does not have a body) HE is a spirit.

6. God is Almighty or omnipotent

7. God is the source of all life and al vita means

b) **According to the conception of Rwandese**
- Imana ni Rurema: God is the Creator.
- Imana ihoraho: God is eternal (not created).
- Imana niyo ishobora byose: God is Almighty or omnipotent.
- Imana niyo Murenyi wa byose: God is the Creator of everything
- Habyarimana: God begets
- Hategekimana: God leads, reigns or governs.
- Imana niyo igena: God gives meaning to everything, God destines everything.

Nowhere the name of God is designed by the stem-Ntu. According to Alexis KAGAME the stem-NTU means being. That is why he distinguishes the 4 categories (being) in Rwandese philosophy in the opposition to the 10 categories according to Aristotle. These four categories are:

- Umuntu: Intelligent being: a human being
- Ikintu: being without intelligence: a thing
- Ukuntu: mode of being
- Ahantu: localization or locator being.

2. A human being and his relationship with other beings

Other beings with which a human being entertains the relationship are the following:

- Others in the clans
- The cosmos

A clanic brotherhood

A human being is a part of the clanic system. He fits in the hierarchy in which we find according to the order of importance:

- The founders of the clan
- The clan chiefs of the family
- The members of the clan

The Muntu is not an isolated individual. He is essentially a defined member by relationship to the family, to the clan and to the tribe. He stays in the system in which the life coming from God flows by the ancestors’ organ. This helps to understand the isolation sanction (punishment). Ex. Guca umwana cyangwa umukobwa watwaye inda y’ikinyendaro).
The isolation removes from all his reason of being. Certain practices such as the alliance, the pact of blood, tend toward the enlargement of the clanic solidarity. The deep meaning of belonging of each member of the family or the clan enhances the clanic solidarity. The attachment to the clan constitutes one of the essential criteria of ethics for Muntu.

Besides, the judgment that the culprit gets has as its origin in the quality of clanic relationships which he has entertained during his life. God’s relationships imply the enjoyment and the blissful (happy) company of the ancestors. A member of the clan is excommunicated if he has the heart full hatred against others. In order to understand fully the meaning of this solidarity, the following precisions are necessary:

1. The clanic cohesion does not exclude the duty of the hospitality towards the stranger to the tribe
2. The communion with others implies by no means disappearing of a person if he would be disordered to the profit of the community.

2. Cosmic brotherhood
An African traditional person, being linked to the community, is also close to the universe linked to him. There is therefore the reciprocal action between the universe and a human being. The last lives in the universe, it sustains him, makes him grow. A human being renews the universe while perfecting himself.

Animals, plants and other inanimate beings (materials) are not considered as external beings but as the extension and vital means to human beings.

The role of the dance and of the word
The dance and the word are the means to be in communion with others and with the cosmic forces. The dance is an expression of cosmic rhythm made by the contraries or the diversity of beings in the world. This, being in constant transformation, maintains itself in
the equilibrium; the equilibrium between masculine and feminine, between the light and
darkness, between fire and water.
The rhythm of the dance or the sound of the tam-tam expresses the life of the universe
which is the perpetual victory of light over the darkness, of fertility to the sterility, brief
of life on death. The word is the real expression of life. The word of ancestors is always
sacred because it is the expression of the community. It gives life in blessing but also it
can annihilate it cursing the member if the community.
This word can have a hold over things because it is sacred. The influence of the word
makes itself felt in the rituals. Each important event of life, such as birth, purification,
marriage demands a word to accompany it.

A human being is composed of a spiritual vital principle which is immortal. He is made
of two principles: the vital principle or the immaterial part and the perishable or the body.
Death is the destruction of the body which stops the activity of the two vital principles.
The superior vital principle which lives in the body leaves it and it is therefore death.

The Causes of death
Death is never a natural, except the extreme of the old age. When a person dies, there is
an intervention of the external agent (the witch or the spirit of death, Umuzimu) which
sanctions the living.

The Consequence of death
We distinguish 3 principal consequence of death:

- In the rank of society: separation of the member with his family
- On the individual level (human nature) separation of different vital principles.
- Depart toward unknown.

On social level: There is empty place which is created in the family, clan and the tribe. It
is the reduction of the vital force of the clan because a member, united with others
constitutes the force.

On the individual level: There is a separation of two principles; material and spiritual.
There is a movement (depart) towards the infinite. Some people say that the dead go to
the underground village. The Rwandese say that they go to the volcanoes.
The meaning of other world

The other world constitutes the preoccupation of an African. It is sometimes represented by the underground village or the village of ancestors. They said that the ‘dead has gone’. The traditional African had no knowledge of the nature of the Other-world. He made himself representation of the other-world in copying the mode of the universe.

This belief explains a good number of principles:
- They dressed the dead so that they may not be naked in the other-world.
- In some cases, women and slaves could accompany the dead.
- They put utensils, the familiar objects or they brought food.

Attitude before the dead

Anguish: in relation with the mode of existence in the other-world and not with the existence itself; hence a deep attachment to life in the world.

Finally African sought to survive in the descendants. That’s why dying without leaving children was considered as a great misfortune. To Africans death does not mean the end of man, but dying is going; it is leaving this world towards another-world. This is manifested in the songs of funeral ceremonies or in the proverbs about death.

Relationship between the death and the living

The world of the dead is not closed world. The dead and the living entertain close and reciprocal relationships. The dead are perceived as the protectors and the controllers of the living. The invisible controllers can bring back to the order those who do not respect the ancestral customs (laws), those who do not ensure the interclanic harmony of life or if they neglect to venerate the ancestors or if they refuse to offer sacrifices.

The living have therefore the hope to be protected by the dead that are very strong by the acquisition of special status (that of the dead). They invoked the dead in their enterprises, journeys and in times of difficulties.

The consequence of this belief: the consequence of this belief is first of all the observance of the ancestral moral doctrine and attachment to the cults of the ancestors. Then the integral family comprises of the living and the dead.
It is in that communion that the traditional Africal found peace, joy and true happiness in life or death.

**Conclusion**

The conception of God, universe, human being (his death), although imperfect ensures harmony of a human being in the society. A human being is neither proud in his greatness nor isolated.

This conception enhances human inquiry in his society and enhances also the spirit of sharing (behavior). Ignorance of this traditional African conception of reality is the cause of the loss of African identity. This ignorance also causes:

**The loss of meaning of life:** Life which has not as a foundation clanic or tribal communion does not have a meaning. Either the meaning of life is the search for perishable material goods or the prestige in the political power.

**Disorder in the society:** Wars, massacres, diseases like AIDS

**B. CONTEMPORARY AFRICAN PHILOSOPHY**

African philosophy as it is studied today is qualified to be contemporary African philosophy in the opposition to the traditional philosophy. The last is the world view proper to African people before the contact white the white people. The African people had a deep thought expressed in the traditional literature or through art. This has been proved by Reverend Placide Tempels in his work ‘Bantu philosophy and by Alexis Kagame in different works.

The contemporary African philosophy is a philosophy elaborated by the current African philosophers. The authors consider this philosophy to be explicit It has 4 major doctrines.

1. Ethno philosophical Doctrine
2. Politico-ideological doctrine
3. Critique Doctrine
4. Synthetic doctrine - Hermeneutic trend
   - Functional trend

1. Ethnophilosophical doctrine
This doctrine begins with Placide Tempels more especially with the apparition of his work ‘Bantu philosophy’. This doctrine has also been supported by the other philosophers such as Alexis Kagame, Mulago, Lufbwabo,…

Ethno-philosophy is defined as African philosophical system which strives to prove the existence of African philosophy inquiring about the myth, proverbs, stories,… In order words, Ethno-philosophy supposes that is in the conformity with our view of African world.

2. Politico-ideology
It is the political tendency which has an objective to fight the colonial domination and its effects. The thought is expressed under the form of ideology. We can mention

- Nationalism
- Panafrcianism
- Conscienticism
- Socialism: Senghor and Nyerere
- Authenticity
- Humanism

**Nationalism**: It is a fight against the western domination demanding for African unity on the State level whereas Panafrcianism is a fight against the domination but demanding unity of the entire Africa.

**Humanism**: Suggested by Kaounda. It is a doctrine or a theory which aims at a person and his welfare and which opposes the political domination a human being.

**Conscienticism**: Theory which permits the African consciousness to come out this conflict advocating for consciousness of African people. (Nkwame Nkrumah).

**Authenticity**: This ideology demands the linking with the ancestors that were free creators. It is supported by Mobutu.
3. Critique Doctrine

This doctrine rejects ethno-philosophy and politico-ideological doctrine.

- Marcien Towa (Cameroonian)
- Elungu Pere Elungu (Congolese)
- Hountondji (Beninese)
- Franz Crahay (Belgian)

According to this doctrine, Placide Tempels does not speak of Bantu philosophy but proper vision to Bantu philosophy. According to this doctrine philosophy is a critical reflection, analytic radically critical and autocratic, and systematic.

4. Synthetic Doctrine

It has two trends:

- Hermeneutic: Elaborates a reflective discourse from the symbols, myth, proverbs stories, art...

- Functional: This does a reflection focusing on the concrete reality of politics (democracy) development liberation African language in philosophy or language African identity and Ethics in Africa.

This specification has a pedagogical aspect but there is also a reality of compenetration.

II. DIGNITY OF HUMAN BEING

i. Individual dignity

One of the fundamental features of the human being as such - the culture testifies some - is precisely to seek the enigma of the human nature which makes each single human being in the world.

All sciences (natural and human) did not succeed in yet explaining the enigmatic nature of the man. That enigma relates to the question: What the man is ? Who am I?

Philosophy tries to question these various modes from knowing by reproaching them their epistemological claims. Here main ways or approaches of questions about the nature of the man.
1. The enigma of the human person
2. The problem of the relation between the body and the heart
3. Singular and irreducible subjectivity
4. Relational intersubjectivity

I. The enigma of the human person

All sciences are unable to explain what man is. As well the natural science as human sciences can’t to give us a sufficient knowledge of the human nature. What this nature? All sciences seek to objectify the man and thus with the chosifier. Being conceived like a dynamic reality, registered in a continual movement of transformation, the man escapes an abuse from objectivation. He is a complex reality, open towards becoming which transcends it. Is the question that how to reach the interiority of the man? with the interiority of the man, his ego?

The answer to this question is without negative question while referring to the history of sciences, with their step since the human spirit begins its attempt at systematization of what he knows. But then, how to found the value of something which one is unaware of nature, or which one can nothing affirm with certainty of his reality? . It is this personal identity complexes which makes at the same time its complexity and its dignity beyond any other reality which one is able to affirm his existence with more or less guarantee. On a side, the concern of science is to arrive to a truth demonstrable and led to the fragmentation and analytical mind thus. Other side, the constitution of the person as D singularity is not suitable for fragmentation. From where the louse difficulty science of including/understanding exactly what is the nature of the man. Thus the man, incarnated spirit, do not manage to be known in his base and his value by science with his preoccupation of analysis and a demonstration. The difficulty in seizing the value of human dignity completely thus lies in at the same time body and spiritual human constitution, in its freedom and the singularity of its lived experiment.

ii. The problem of the relation between the body and the heart
The problem of the constitutional unit of the man poses also problem. Certain thinkers admitted the existence of two independent and irreducible substances one with the other, i.e. body and spirit. Others, the monists, do not admit that only one element. All these positions did nothing but nourish discussions without never leading to a satisfactory result. As well on the side materialist as on the spiritualistic idealistic side, it appeared as these problems were posed while having in advance of the proposals for solutions. That which implied at the beginning of the prejudices which prevented from arriving to a satisfactory answer. Others still affirm the dualism of the man as composed of separable bodies and the heart but. It is necessary to see the various doctrines seen previously. The representatives of various religions in their turn ressuscitent it under a new aspect, because of the insoluble question of died and the faith in resurrection. Ultimately, a point which appears interesting to us to underline, and which comes to reinforce our reflexion present, is included in what follows: “Is enough to say the degree of intimacy of the heart, if what has just been summarized is true. It does not matter the state in which is an alive human body, him and the heart do only one, all and left, whatever can be the apparent condition, sometimes decreased, of the body”. (Thomas de Konink, human dignity, P.97).

III. Singular and irreducible subjectivity

The question here is that of the man like being single different from any other person. Each human person has a singular, particular identity. Any man is different from the different one. Even if one speaks about the human nature, each person has her own characteristics. Even if the men share their same place of localization, the same social group, even social experiment, but it is different and has its historical experiences (biographical) different. The man cannot be reduced to different or the others.

iii. Relational intersubjectivity

The man is primarily relational. Its relations are expressed through various social modes: company, groups, culture, language, common material conditions. They are in relation, but at the same time are different. It is what makes the human richness, it is this
difference, but also limited. The intersubjectivity implies the relation between two people, but the relation within a great group of people. These are the different human characteristics which make the dignity of the person (rights and duties), but also since the man is conscious of all that.

PART II. PHILOSOPHY OF LAW

I. LAW DOCTRINES

II. HANS KELSEN AND RONALD DWORKIN

I. LAW DOCTRINES

Philosophy of law (or legal philosophy) is concerned with providing a general philosophical analysis of law and legal institutions. Issues in the field range from abstract conceptual questions about the nature of law and legal systems to normative questions about the relationship between law and morality and the justification for various legal institutions.

Topics in legal philosophy tend to be more abstract than related topics in political philosophy and applied ethics. For example, whereas the question of how properly to interpret the U.S. Constitution belongs to democratic theory (and hence falls under the heading of political philosophy), the analysis of legal interpretation falls under the heading of legal philosophy. Likewise, whereas the question of whether capital punishment is morally permissible falls under the heading of applied ethics, the question of whether the institution of punishment can be justified falls under the heading of legal philosophy.

There are roughly three categories into which the topics of legal philosophy fall: analytic jurisprudence, normative jurisprudence, and critical theories of law. Analytic jurisprudence involves providing an analysis of the essence of law so as to understand
what differentiates it from other systems of norms, such as ethics. Normative jurisprudence involves the examination of normative, evaluative, and otherwise prescriptive issues about the law, such as restrictions on freedom, obligations to obey the law, and the grounds for punishment. Finally, critical theories of law, such as critical legal studies and feminist jurisprudence, challenge more traditional forms of legal philosophy.

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1. Analytic Jurisprudence
The principal objective of analytic jurisprudence has traditionally been to provide an account of what distinguishes law as a system of norms from other systems of norms, such as ethical norms. As John Austin describes the project, analytic jurisprudence seeks "the essence or nature which is common to all laws that are properly so called" (Austin 1995, p. 11). Accordingly, analytic jurisprudence is concerned with providing necessary and sufficient conditions for the existence of law that distinguish law from non-law.

While this task is usually interpreted as an attempt to analyze the concepts of law and legal system, there is some confusion as to both the value and character of conceptual analysis in philosophy of law. As Brian Leiter (1998) points out, philosophy of law is one of the few philosophical disciplines that takes conceptual analysis as its principal concern; most other areas in philosophy have taken a naturalistic turn, incorporating the tools and methods of the sciences. To clarify the role of conceptual analysis in law, Brian Bix (1995) distinguishes a number of different purposes that can be served by conceptual claims:

1. to track linguistic usage;
2. to stipulate meanings;
3. to explain what is important or essential about a class of objects; and
4. to establish an evaluative test for the concept-word.

Bix takes conceptual analysis in law to be primarily concerned with (3) and (4).

In any event, conceptual analysis of law remains an important, if controversial, project in contemporary legal theory. Conceptual theories of law can be divided into two main headings: (a) those that affirm there is a conceptual relation between law and morality and (b) those that deny that there is such a relation. Nevertheless, Ronald Dworkin's view is often characterized as a third theory partly because it is not clear where he stands on the question of whether there is a conceptual relation between law and morality.

a. Natural Law Theory
All forms of natural law theory subscribe to the *Overlap Thesis*, which is that there is a necessary relation between the concepts of law and morality. According to this view, then, the concept of law cannot be fully articulated without some reference to moral notions. Though the Overlap Thesis may seem unambiguous, there are a number of different ways in which it can be interpreted.

The strongest form of the Overlap Thesis underlies the classical naturalism of St. Thomas Aquinas and William Blackstone. As Blackstone describes the thesis:

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately.

In this passage, Blackstone articulates the two claims that constitute the theoretical core of classical naturalism: 1) there can be no legally valid standards that conflict with the natural law; and 2) all valid laws derive what force and authority they have from the natural law. On this view, to paraphrase Augustine, an unjust law is no law at all.

Related to Blackstone's classical naturalism is the neo-naturalism of John Finnis (1980). Finnis believes that the naturalism of Aquinas and Blackstone should not be construed as a conceptual account of the existence conditions for law. According to Finnis (see also Bix, 1996), the classical naturalists were not concerned with giving a conceptual account of legal validity; rather they were concerned with explaining the moral force of law: "the principles of natural law explain the obligatory force (in the fullest sense of "obligation") of positive laws, even when those laws cannot be deduced from those principles" (Finnis 1980, pp. 23-24). On Finnis's view of the Overlap Thesis, the essential function of law is to provide a justification for state coercion. Accordingly, an unjust law can be legally valid, but cannot provide an adequate justification for use of the state coercive power and is hence not obligatory in the fullest sense; thus, an unjust law fails to realize the moral ideals implicit in the concept of law. An unjust law, on this view, is legally binding, but is not fully law.
Lon Fuller (1964) rejects the idea that there are necessary moral constraints on the content of law. On Fuller's view, law is necessarily subject to a *procedural* morality consisting of eight principles:

P1: the rules must be expressed in general terms;
P2: the rules must be publicly promulgated;
P3: the rules must be prospective in effect;
P4: the rules must be expressed in understandable terms;
P5: the rules must be consistent with one another;
P6: the rules must not require conduct beyond the powers of the affected parties;
P7: the rules must not be changed so frequently that the subject cannot rely on them; and
P8: the rules must be administered in a manner consistent with their wording.

On Fuller's view, no system of rules that fails minimally to satisfy these principles of legality can achieve law's essential purpose of achieving social order through the use of rules that guide behavior. A system of rules that fails to satisfy (P2) or (P4), for example, cannot guide behavior because people will not be able to determine what the rules require. Accordingly, Fuller concludes that his eight principles are "internal" to law in the sense that they are built into the existence conditions for law: "A total failure in any one of these eight directions does not simply result in a bad system of law; it results in something that is not properly called a legal system at all" (1964, p. 39).

**b. Legal Positivism**

Opposed to all forms of naturalism is *legal positivism*, which is roughly constituted by three theoretical commitments: (i) the Social Fact Thesis, (ii) the Conventionality Thesis, and (iii) the Separability Thesis. The *Social Fact Thesis* (which is also known as the *Pedigree Thesis*) asserts that it is a necessary truth that legal validity is ultimately a function of certain kinds of social facts. The *Conventionality Thesis* emphasizes law's conventional nature, claiming that the social facts giving rise to legal validity are authoritative in virtue of some kind of social convention. The *Separability Thesis*, at the most general level, simply denies naturalism's Overlap Thesis; according to the
Separability Thesis, there is no conceptual overlap between the notions of law and morality.

i. The Conventionality Thesis

According to the Conventionality Thesis, it is a conceptual truth about law that legal validity can ultimately be explained in terms of criteria that are authoritative in virtue of some kind of social convention. Thus, for example, H.L.A. Hart (1996) believes the criteria of legal validity are contained in a rule of recognition that sets forth rules for creating, changing, and adjudicating law. On Hart's view, the rule of recognition is authoritative in virtue of a convention among officials to regard its criteria as standards that govern their behavior as officials. While Joseph Raz does not appear to endorse Hart's view about a master rule of recognition containing the criteria of validity, he also believes the validity criteria are authoritative only in virtue of a convention among officials.

ii. The Social Fact Thesis

The Social Fact Thesis asserts that legal validity is a function of certain social facts. Borrowing heavily from Jeremy Bentham, John Austin (1995) argues that the principal distinguishing feature of a legal system is the presence of a sovereign who is habitually obeyed by most people in the society, but not in the habit of obeying any determinate human superior. On Austin's view, a rule R is legally valid in a society S if and only if R is commanded by the sovereign in S and is backed up with the threat of a sanction.

The relevant social fact that confers validity, on Austin's view, is promulgation by a sovereign willing to impose a sanction for noncompliance.

Hart takes a different view of the Social Fact Thesis. Hart believes that Austin's theory accounts, at most, for one kind of rule: primary rules that require or prohibit certain kinds of behavior. On Hart's view, Austin overlooked the presence of other primary rules that confer upon citizens the power to create, modify, and extinguish rights and obligations in other persons. As Hart points out, the rules governing the creation of contracts and wills
cannot plausibly be characterized as restrictions on freedom that are backed by the threat of a sanction.

Most importantly, however, Hart argues Austin overlooks the existence of secondary meta-rules that have as their subject matter the primary rules themselves and distinguish full-blown legal systems from primitive systems of law:

[Secondary rules] may all be said to be on a different level from the primary rules, for they are all about such rules; in the sense that while primary rules are concerned with the actions that individuals must or must not do, these secondary rules are all concerned with the primary rules themselves. They specify the way in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined (Hart 1994, p. 92).

Hart distinguishes three types of secondary rules that mark the transition from primitive forms of law to full-blown legal systems: (1) the rule of recognition, which "specif[ies] some feature or features possession of which by a suggested rule is taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts" (Hart 1994, p. 92); (2) the rule of change, which enables a society to add, remove, and modify valid rules; and (3) the rule of adjudication, which provides a mechanism for determining whether a valid rule has been violated. On Hart's view, then, every society with a full-blown legal system necessarily has a rule of recognition that articulates criteria for legal validity that include provisions for making, changing and adjudicating law. Law is, to use Hart's famous phrase, "the union of primary and secondary rules" (Hart 1994, p. 107).

According to Hart's view of the Social Fact Thesis, then, a proposition P is legally valid in a society S if and only if it satisfies the criteria of validity contained in a rule of recognition that is binding in S. As we have seen, the Conventionality Thesis implies that a rule of recognition is binding in S only if there is a social convention among officials to treat it as defining standards of official behavior. Thus, on Hart's view, "[the] rules of recognition specifying the criteria of legal validity and its rules of change and
adjudication must be effectively accepted as common public standards of official behaviour by its officials" (Hart 1994, p. 113).

iii. The Separability Thesis

The final thesis comprising the foundation of legal positivism is the Separability Thesis. In its most general form, the Separability Thesis asserts that law and morality are conceptually distinct. This abstract formulation can be interpreted in a number of ways. For example, Klaus Förper (1996) interprets it as making a meta-level claim that the definition of law must be entirely free of moral notions. This interpretation implies that any reference to moral considerations in defining the related notions of law, legal validity, and legal system is inconsistent with the Separability Thesis.

More commonly, the Separability Thesis is interpreted as making only an object-level claim about the existence conditions for legal validity. As Hart describes it, the Separability Thesis is no more than the "simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so" (Hart 1994, pp. 181-82). Insofar as the object-level interpretation of the Separability Thesis denies it is a necessary truth that there are moral constraints on legal validity, it implies the existence of a possible legal system in which there are no moral constraints on legal validity.

Though all positivists agree there are possible legal systems without moral constraints on legal validity, there are conflicting views on whether there are possible legal systems with such constraints. According to inclusive positivism (also known as incorporationism and soft positivism), it is possible for a society's rule of recognition to incorporate moral constraints on the content of law. Prominent inclusive positivists include Jules Coleman and Hart, who maintains that "the rule of recognition may incorporate as criteria of legal validity conformity with moral principles or substantive values ... such as the Sixteenth or Nineteenth Amendments to the United States Constitution respecting the establishment of religion or abridgements of the right to vote" (Hart 1994, p. 250).
In contrast, exclusive positivism (also called hard positivism) denies that a legal system can incorporate moral constraints on legal validity. Exclusive positivists like Raz (1979) subscribe to the Source Thesis, according to which the existence and content of law can always be determined by reference to its sources without recourse to moral argument. On this view, the sources of law include both the circumstances of its promulgation and relevant interpretative materials, such as court cases involving its application.

c. Ronald Dworkin's Third Theory

Ronald Dworkin rejects positivism's Social Fact Thesis on the ground that there are some legal standards the authority of which cannot be explained in terms of social facts. In deciding hard cases, for example, judges often invoke moral principles that Dworkin believes do not derive their legal authority from the social criteria of legality contained in a rule of recognition (Dworkin 1977, p. 40).

Nevertheless, since judges are bound to consider such principles when relevant, they must be characterized as law. Thus, Dworkin concludes, "if we treat principles as law we must reject the positivists' first tenet, that the law of a community is distinguished from other social standards by some test in the form of a master rule" (Dworkin 1977, p. 44).

Dworkin believes adjudication is and should be interpretive: "judges should decide hard cases by interpreting the political structure of their community in the following, perhaps special way: by trying to find the best justification they can find, in principles of political morality, for the structure as a whole, from the most profound constitutional rules and arrangements to the details of, for example, the private law of tort or contract" (Dworkin 1982, p. 165). There are, then, two elements of a successful interpretation. First, since an interpretation is successful insofar as it justifies the particular practices of a particular society, the interpretation must fit with those practices in the sense that it coheres with existing legal materials defining the practices. Second, since an interpretation provides a moral justification for those practices, it must present them in the best possible moral light. Thus, Dworkin argues, a judge should strive to interpret a case in roughly the following way:
A thoughtful judge might establish for himself, for example, a rough "threshold" of fit which any interpretation of data must meet in order to be "acceptable" on the dimension of fit, and then suppose that if more than one interpretation of some part of the law meets this threshold, the choice among these should be made, not through further and more precise comparisons between the two along that dimension, but by choosing the interpretation which is "substantively" better, that is, which better promotes the political ideals he thinks correct (Dworkin 1982, p. 171).

Accordingly, on Dworkin's view, the legal authority of a binding principle derives from the contribution it makes to the best moral justification for a society's legal practices considered as a whole. Thus, a legal principle maximally contributes to such a justification if and only if it satisfies two conditions:

1. the principle coheres with existing legal materials; and
2. the principle is the most morally attractive standard that satisfies (1).

The correct legal principle is the one that makes the law the moral best it can be.

In later writings, Dworkin expands the scope of his "constructivist" view beyond adjudication to encompass the realm of legal theory. Dworkin distinguishes conversational interpretation from artistic/creative interpretation and argues that the task of interpreting a social practice is more like artistic interpretation:

The most familiar occasion of interpretation is conversation. We interpret the sounds or marks another person makes in order to decide what he has said. Artistic interpretation is yet another: critics interpret poems and plays and paintings in order to defend some view of their meaning or theme or point. The form of interpretation we are studying-the interpretation of a social practice-is like artistic interpretation in this way: both aim to interpret something created by people as an entity distinct from them, rather than what people say, as in conversational interpretation" (Dworkin 1986, p. 50).

Artistic interpretation, like judicial interpretation, is constrained by the dimensions of fit and justification: "constructive interpretation is a matter of imposing purpose on an object
or practice in order to make of it the best possible example of the form or genre to which
it is taken to belong" (Dworkin 1986, p. 52).

On Dworkin's view, the point of any general theory of law is to interpret a very complex
set of related social practices that are "created by people as an entity distinct from them"; for this reason, Dworkin believes the project of putting together a general theory of law is inherently constructivist:

General theories of law must be abstract because they aim to interpret the main point and structure of legal practice, not some particular part or department of it. But for all their abstraction, they are constructive interpretations: they try to show legal practice as a whole in its best light, to achieve equilibrium between legal practice as they find it and the best justification of that practice. So no firm line divides jurisprudence from adjudication or any other aspect of legal practice (Dworkin 1986, p. 90).

Indeed, so tight is the relation between jurisprudence and adjudication, according to Dworkin, that jurisprudence is no more than the most general part of adjudication; thus, Dworkin concludes, "any judge's opinion is itself a piece of legal philosophy" (Dworkin 1986, p. 90).

Accordingly, Dworkin rejects not only positivism's Social Fact Thesis, but also what he takes to be its underlying presuppositions about legal theory. Hart distinguishes two perspectives from which a set of legal practices can be understood. A legal practice can be understood from the "internal" point of view of the person who accepts that practice as providing legitimate guides to conduct, as well as from the "external" point of view of the observer who wishes to understand the practice but does not accept it as being authoritative or legitimate.

Hart understands his theory of law to be both descriptive and general in the sense that it provides an account of fundamental features common to all legal systems—which presupposes a point of view that is external to all legal systems. For this reason, he regards his project as "a radically different enterprise from Dworkin's conception of legal theory (or 'jurisprudence' as he often terms it) as in part evaluative and justificatory and
as 'addressed to a particular legal culture', which is usually the theorist's own and in Dworkin's case is that of Anglo-American law" (Hart 1994, p. 240).

These remarks show Hart believes Dworkin's theoretical objectives are fundamentally different from those of positivism, which, as a theory of analytic jurisprudence, is largely concerned with conceptual analysis. For his part, Dworkin conceives his work as conceptual but not in the same sense that Hart regards his work:

We all-at least all lawyers-share a concept of law and of legal right, and we contest different conceptions of that concept. Positivism defends a particular conception, and I have tried to defend a competing conception. We disagree about what legal rights are in much the same way as we philosophers who argue about justice disagree about what justice is. I concentrate on the details of a particular legal system with which I am especially familiar, not simply to show that positivism provides a poor account of that system, but to show that positivism provides a poor conception of the concept of a legal right (Dworkin 1977, 351-52).

These differences between Hart and Dworkin have led many legal philosophers, most recently Bix (1996), to suspect that they are not really taking inconsistent positions at all. Accordingly, there remains an issue as to whether Dworkin's work should be construed as falling under the rubric of analytic jurisprudence.

2. Normative Jurisprudence

Normative jurisprudence involves normative, evaluative, and otherwise prescriptive questions about the law. Here we will examine three key issues: (a) when and to what extent laws can restrict the freedom of citizens, (b) the nature of one's obligation to obey the law, and (c) the justification of punishment by law.

a. Freedom and the Limits of Legitimate Law

Laws limit human autonomy by restricting freedom. Criminal laws, for example, remove certain behaviors from the range of behavioral options by penalizing them with
imprisonment and, in some cases, death. Likewise, civil laws require people to take certain precautions not to injure others and to honor their contracts. Given that human autonomy deserves prima facie moral respect, the question arises as to what are the limits of the state's legitimate authority to restrict the freedom of its citizens.

John Stuart Mill provides the classic liberal answer in the form of the harm principle:

The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. The only purpose for which power can rightfully be exercised over any member of a civilised community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. Over himself, over his own body and mind, the individual is sovereign (Mill 1906, pp. 12-13).

While Mill left the notion of harm underdeveloped, he is most frequently taken to mean only physical harms and more extreme forms of psychological harm.

Though Mill's view—or something like it—enjoys currency among the public, it has generated considerable controversy among philosophers of law and political philosophers. Many philosophers believe that Mill understates the limits of legitimate state authority over the individual, claiming that law may be used to enforce morality, to protect the individual from herself, and in some cases to protect individuals from offensive behavior.

i. Legal Moralism

Legal moralism is the view that the law can legitimately be used to prohibit behaviors that conflict with society's collective moral judgments even when those behaviors do not result in physical or psychological harm to others. According to this view, a person's freedom can legitimately be restricted simply because it conflicts with society's collective morality; thus, legal moralism implies that it is permissible for the state to use its coercive power to enforce society's collective morality.
The most famous legal moralist is Patrick Devlin, who argues that a shared morality is essential to the existence of a society:

[I]f men and women try to create a society in which there is no fundamental agreement about good and evil they will fail; if, having based it on common agreement, the agreement goes, the society will disintegrate. For society is not something that is kept together physically; it is held by the invisible bonds of common thought. If the bonds were too far relaxed the members would drift apart. A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price. (Devlin 1965, p. 10).

Insofar as human beings cannot lead a meaningful existence outside of society, it follows, on Devlin's view, that the law can be used to preserve the shared morality as a means of preserving society itself.

H.L.A. Hart (1963) points out that Devlin overstates the extent to which preservation of a shared morality is necessary to the continuing existence of a society. Devlin attempts to conclude from the necessity of a shared social morality that it is permissible for the state to legislate sexual morality (in particular, to legislate against same-sex sexual relations), but Hart argues it is implausible to think that "deviation from accepted sexual morality, even by adults in private, is something which, like treason, threatens the existence of society" (Hart 1963, p. 50). While enforcement of certain social norms protecting life, safety, and property are likely essential to the existence of a society, a society can survive a diversity of behavior in many other areas of moral concern—as is evidenced by the controversies in the U.S. surrounding abortion and homosexuality.

ii. Legal Paternalism

*Legal paternalism* is the view that it is permissible for the state to legislate against what Mill calls "self-regarding actions" when necessary to prevent individuals from inflicting physical or severe emotional harm on *themselves*. As Gerald Dworkin describes it, a paternalist interference is an "interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests or values of
the person being coerced" (G. Dworkin 1972, p. 65). Thus, for example, a law requiring use of a helmet when riding a motorcycle is a paternalistic interference insofar as it is justified by concerns for the safety of the rider.

Dworkin argues that Mill's view that a person "cannot rightfully be compelled to do or forbear because it will be better for him" (Mill 1906, p. 13) precludes paternalistic legislation to which fully rational individuals would agree. According to Dworkin, there are goods, such as health and education, that any rational person needs to pursue her own good-no matter how that good is conceived. Thus, Dworkin concludes, the attainment of these basic goods can legitimately be promoted in certain circumstances by using the state's coercive force.

Dworkin offers a hypothetical consent justification for his limited legal paternalism. On his view, there are a number of different situations in which fully rational adults would consent to paternalistic restrictions on freedom. For example, Dworkin believes a fully rational adult would consent to paternalistic restrictions to protect her from making decisions that are "far-reaching, potentially dangerous and irreversible" (G. Dworkin 1972, p. 80). Nevertheless, he argues that there are limits to legitimate paternalism: (1) the state must show that the behavior governed by the proposed restriction involves the sort of harm that a rational person would want to avoid; (2) on the calculations of a fully rational person, the potential harm outweighs the benefits of the relevant behavior; and (3) the proposed restriction is the least restrictive alternative for protecting against the harm.

iii. The Offense Principle

Joel Feinberg believes the harm principle does not provide sufficient protection against the wrongful behaviors of others, as it is inconsistent with many criminal prohibitions we take for granted as being justified. If the only legitimate use of the state coercive force is to protect people from harm caused by others, then statutes prohibiting public sex are impermissible because public sex might be offensive but it does not cause harm (in the Millian sense) to others.
Accordingly, Feinberg argues the harm principle must be augmented by the *offense principle*, which he defines as follows: "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end" (Feinberg 1985). By "offense," Feinberg intends a subjective and objective element: the subjective element consists in the experience of an unpleasant mental state (for example, shame, disgust, anxiety, embarrassment); the objective element consists in the existence of a wrongful cause of such a mental state.

**b. The Obligation to Obey Law**

Natural law critics of positivism (for example, Fuller 1958) frequently complain that if positivism is correct, there cannot be a moral obligation to obey the law *qua law* (that is, to obey the law as such, no matter what the laws are, simply because it is the law). As Feinberg (1979) puts the point:

The positivist account of legal validity is hard to reconcile with the [claim] that valid law as such, no matter what its content, deserves our respect and general fidelity. Even if valid law is bad law, we have some obligation to obey it simply because it is law. But how can this be so if a law's validity has nothing to do with its content?

The idea is this: if what is essential to law is just that there exist specified recipes for making law, then there cannot be a moral obligation to obey a rule *simply because it is the law*.

Contemporary positivists, for the most part, accept the idea that positivism is inconsistent with an obligation to obey law *qua law* (compare Himma 1998), but argue that the mere status of a norm as law cannot give rise to any moral obligation to obey that norm. While there might be a moral obligation to obey a particular law because of its moral content (for example, laws prohibiting murder) or because it solves a coordination problem (for example, laws requiring people to drive on the right side of the road), the mere fact that a rule is law does not provide a moral reason for doing what the law requires.
Indeed, arguments for the existence of even a *prima facie* obligation to obey law (that is, an obligation that can be outweighed by competing obligations) have largely been unsuccessful. Arguments in favor of an obligation to obey the law roughly fall into four categories: (1) arguments from gratitude; (2) arguments from fair play; (3) arguments from implied consent; and (4) arguments from general utility.

The argument from gratitude begins with the observation that all persons, even those who are worst off, derive some benefit from the state's enforcement of the law. On this view, a person who accepts benefits from another person thereby incurs a duty of gratitude towards the benefactor. And the only plausible way to discharge this duty towards the government is to obey its laws. Nevertheless, as M.B.E. Smith points out (1973, p. 953), "if someone confers benefits on me without any consideration of whether I want them, and if he does this in order to advance some purpose other than promotion of my particular welfare, I have no obligation to be grateful towards him." Since the state does not give citizens a choice with respect to such benefits, the mere enjoyment of them cannot give rise to a duty of gratitude.

*John Rawls* (1964) argues that there is a moral obligation to obey law qua law in societies in which there is a mutually beneficial and just scheme of social cooperation. What gives rise to a moral obligation to obey law qua law in such societies is a duty of fair play: fairness requires obedience of persons who intentionally accept the benefits made available in a society organized around a just scheme of mutually beneficial cooperation. There are a couple of problems here. First, Rawls's argument does not establish the existence of a content-independent obligation to obey law; the obligation arises only in those societies that institutionalize a just scheme of social cooperation. Second, even in such societies, citizens are not presented with a genuine option to refuse those benefits. For example, I cannot avoid the benefits of laws ensuring clean air. But accepting benefits one is not in a position to refuse cannot give rise to an obligation of fair play.

The argument from consent grounds an obligation to obey law on some sort of implied promise. As is readily evident, we can voluntarily assume obligations by consenting to them or making a promise. Of course, most citizens never explicitly promise or consent
to obey the laws; for this reason, proponents of this argument attempt to infer consent from such considerations as continued residence and acceptance of benefits from the state. Nevertheless, acceptance of benefits one cannot decline no more implies consent to obey law than it does duties of fair play or gratitude. Moreover, the prohibitive difficulties associated with emigration preclude an inference of consent from continued residence.

Finally, the argument from general utility grounds the duty to obey the law in the consequences of universal disobedience. Since, according to this argument, the consequences of general disobedience would be catastrophic, it is wrong for any individual to disobey the law; for no person may disobey the law unless everyone may do so. In response, Smith points out that this strategy of argument leads to absurdities: "We will have to maintain, for example, that there is a prima facie obligation not to eat dinner at five o'clock, for if everyone did so, certain essential services could not be maintained" (Smith 1973, p. 966).

c. The Justification of Punishment

Punishment is unique among putatively legitimate acts in that its point is to inflict discomfort on the recipient; an act that is incapable of causing a person minimal discomfort cannot be characterized as a punishment. In most contexts, the commission of an act for the purpose of inflicting discomfort is morally problematic because of its resemblance to torture. For this reason, institutional punishment requires a moral justification sufficient to distinguish it from other practices of purposely inflicting discomfort on other people.

Justifications for punishment typically take five forms: (1) retributive; (2) deterrence; (3) preventive; (4) rehabilitative; and (5) restitutionary. According to the retributive justification, what justifies punishing a person is that she committed an offense that deserves the punishment. On this view, it is morally appropriate that a person who has committed a wrongful act should suffer in proportion to the magnitude of her wrongdoing. The problem, however, is that the mere fact that someone is deserving of
punishment does not imply it is morally permissible for the state to administer punishment; it would be wrong for me, for example, to punish someone else's child even though her behavior might deserve it.

In contrast to the retributivist theories that look back to a person's prior wrongful act as justification for punishment, utilitarian theories look forward to the beneficial consequences of punishing a person. There are three main lines of utilitarian reasoning. According to the deterrence justification, punishment of a wrongdoer is justified by the socially beneficial effects that it has on other persons. On this view, punishment deters wrongdoing by persons who would otherwise commit wrongful acts. The problem with the deterrence theory is that it justifies punishment of one person on the strength of the effects that it has on other persons. The idea that it is permissible to deliberately inflict discomfort on one person because doing so may have beneficial effects on the behavior of other persons appears inconsistent with the Kantian principle that it is wrong to use people as mere means.

The preventive justification argues that incarcerating a person for wrongful acts is justified insofar as it prevents that person from committing wrongful acts against society during the period of incarceration. The rehabilitative justification argues that punishment is justified in virtue of the effect that it has on the moral character of the offender. Each of these justifications suffers from the same flaw: prevention of crime and rehabilitation of the offender can be achieved without the deliberate infliction of discomfort that constitutes punishment. For example, prevention of crime might require detaining the offender, but it does not require detention in an environment that is as unpleasant as those typically found in prisons.

The restitutionary justification focuses on the effect of the offender's wrongful act on the victim. Other theories of punishment conceptualize the wrongful act as an offense against society; the restitutionary theory sees wrongdoing as an offense against the victim. Thus, on this view, the principal purpose of punishment must be to make the victim whole to the extent that this can be done: "The point is not that the offender deserves to suffer; it is rather that the offended party desires compensation" (Barnett 1977, p. 289). Accordingly,
a criminal convicted of wrongdoing should be sentenced to compensate her victim in proportion to the victim's loss. The problem with the restitutionary theory is that it fails to distinguish between compensation and punishment. Compensatory objectives focus on the victim, while punitive objectives focus on the offender.

3. Critical Theories of Law

a. Legal Realism

The legal realist movement was inspired by John Chipman Gray and Oliver Wendall Holmes and reached its apex in the 1920s and 30s through the work of Karl Llewellyn, Jerome Frank, and Felix Cohen. The realists eschewed the conceptual approach of the positivists and naturalists in favor of an empirical analysis that sought to show how practicing judges really decide cases (see Leiter 1998). The realists were deeply skeptical of the ascendant notion that judicial legislation is a rarity. While not entirely rejecting the idea that judges can be constrained by rules, the realists maintained that judges create new law through the exercise of lawmaking discretion considerably more often than is commonly supposed. On their view, judicial decision is guided far more frequently by political and moral intuitions about the facts of the case (instead of by legal rules) than theories like positivism and naturalism acknowledge.

As an historical matter, legal realism arose in response to legal formalism, a particular model of legal reasoning that assimilates legal reasoning to syllogistic reasoning. According to the formalist model, the legal outcome (that is, the holding) logically follows from the legal rule (major premise) and a statement of the relevant facts (minor premise). Realists believe that formalism understates judicial lawmaking abilities insofar as it represents legal outcomes as entailed syllogistically by applicable rules and facts. For if legal outcomes are logically implied by propositions that bind judges, it follows that judges lack legal authority to reach conflicting outcomes.

*Legal realism* can roughly be characterized by the following claims:
1. the class of available legal materials is insufficient to logically entail a unique legal outcome in most cases worth litigating at the appellate level (the *Local Indeterminacy Thesis*);

2. in such cases, judges make new law in deciding legal disputes through the exercise of a lawmaking discretion (the *Discretion Thesis*); and

3. judicial decisions in indeterminate cases are influenced by the judge's political and moral convictions, not by legal considerations.

Though (3) is logically independent of (1) and (2), (1) seems to imply (2): insofar as judges decide legally indeterminate cases, they must be creating new law.

It is worth noting the relations between legal realism, formalism, and positivism. While formalism is often thought to be entailed by positivism, it turns out that legal realism is not only consistent with positivism, but also presupposes the truth of all three of positivism's core theses. Indeed, the realist acknowledges that law is essentially the product of official activity, but believes that judicial lawmaking occurs more frequently than is commonly assumed. But the idea that law is essentially the product of official activity presupposes the truth of positivism's Conventionality, Social Fact, and Separability theses. Though the preoccupations of the realists were empirical (that is, attempting to identify the psychological and sociological factors influencing judicial decision-making), their implicit conceptual commitments were decidedly positivistic in flavor.

**b. Critical Legal Studies**

The critical legal studies (CLS) movement attempts to expand the radical aspects of legal realism into a Marxist critique of mainstream liberal jurisprudence. CLS theorists believe the realists understate the extent of indeterminacy; whereas the realists believe that indeterminacy is local in the sense that it is confined to a certain class of cases, CLS theorists argue that law is radically (or globally) indeterminate in the sense that the class of available legal materials rarely, if ever, logically/causally entails a unique outcome.
CLS theorists emphasize the role of ideology in shaping the content of the law. On this view, the content of the law in liberal democracies necessarily reflects "ideological struggles among social factions in which competing conceptions of justice, goodness, and social and political life get compromised, truncated, vitiated, and adjusted" (Altman 1986, p. 221). The inevitable outcome of such struggles, on this view, is a profound inconsistency permeating the deepest layers of the law. It is this pervasive inconsistency that gives rise to radical indeterminacy in the law. For insofar as the law is inconsistent, a judge can justify any of a number of conflicting outcomes.

At the heart of the CLS critique of liberal jurisprudence is the idea that radical indeterminacy is inconsistent with liberal conceptions of legitimacy. According to these traditional liberal conceptions, the province of judges is to interpret, and not make, the law. For, on this view, democratic ideals imply that lawmaking must be left to legislators who, unlike appointed judges, are accountable to the electorate. But if law is radically indeterminate, then judges nearly always decide cases by making new law, which is inconsistent with liberal conceptions of the legitimate sources of lawmaking authority.

c. Law and Economics

The law and economics movement argues for the value of economic analysis in the law both as a description about how courts and legislators do behave and as a prescription for how such officials should behave. The legal economists, led by Richard Posner, argue that the content of many areas of the common law can be explained in terms of its tendency to maximize preferences:

Many areas of law, especially the great common law fields of property, torts, crimes, and contracts, bear the stamp of economic reasoning. It is not a refutation that few judicial opinions contain explicit references to economic concepts. Often the true grounds of decision are concealed rather than illuminated by the characteristic rhetoric of judicial opinions. Indeed, legal education consists primarily of learning to dig beneath the rhetorical surface to find those grounds, many of which may turn out to have an economic character (Posner 1992, p. 23).
Posner subscribes to the so-called efficiency theory of the common law, according to which "the common law is best (not perfectly) explained as a system for maximizing the wealth of society" (Posner 1992, p. 23).

More influential than Posner's descriptive claims is his normative view that law should strive to maximize wealth. According to Posner, the proper goal of the statutory and common law is to promote wealth maximization, which can best be done by facilitating the mechanisms of the free market. Posner's normative view combines elements of utilitarian analysis with a Kantian respect for autonomy. On the utilitarian side, markets tend to maximize wealth and the satisfaction of preferences. In a market transaction with no third-party effects, wealth is increased because all parties are made better off by the transaction-otherwise there would be no incentive to consummate the transaction-and no one is made worse off.

On the Kantian side, the law should facilitate market transactions because market transactions best reflect autonomous judgments about the value of individual preferences. At least ideally, individuals express and realize their preferences through mutually consensual market transactions consummated from positions of equal bargaining power. Thus, market transactions tend, ideally, to be both efficient (because they tend to maximize wealth without harmful third-party effects) and just (because all parties are consenting).

d. Outsider Jurisprudence

So-called "outsider jurisprudence" is concerned with providing an analysis of the ways in which law is structured to promote the interests of white males and to exclude females and persons of color. For example, one principal objective of feminist jurisprudence is to show how patriarchal assumptions have shaped the content of laws in a wide variety of areas: property, contract, criminal law, constitutional law, and the law of civil rights. Additionally, feminist scholars challenge traditional ideals of judicial decision-making according to which judges decide legal disputes by applying neutral rules in an impartial
and objective fashion. Feminists have, of course, always questioned whether it is possible for judges to achieve an objective and impartial perspective, but now question whether the traditional model is even desirable.

Critical race theory is likewise concerned to point up the way in which assumptions of white supremacy have shaped the content of the law at the expense of persons of color. Additionally, critical race theorists show how the experience, concerns, values, and perspectives of persons of color are systematically excluded from mainstream discourse among practicing lawyers, judges, and legislators. Finally, such theorists attempt to show how assumptions about race are built into most liberal theories of law.

CHAP. II. CONTEMPRARY THEORIES OF LAW

2. HANS KELSEN’S THEORY

Hans Kelsen is an eminent theorist of contemporary law.
His theory of law called positivism is opposed to natural law.
Kelsen's theory is based on the following elements: the pyramid or hierarchy of norms, the basic law and the system of norms. The legal order constitutes a hierarchical construction where a lower norm cannot contradict the one which is immediately superior to it, except to be corrected, or even annulled by a dispute. This hierarchy of norms in pyramids is at the origin of the emergence of the control of constitutionality in several Western countries (including France with its Constitutional Council).
Kelsen criticizes natural law by claiming that it considers nature to be the expression of divine will or reasonable order, whereas law is a human order established by natural reason.
Hans Kelsen, a well-known lawyer of the twentieth century, helped to transform the approach of law by attempting to transform it into an autonomous and objective science. He made a clear distinction between the study of law and its creation. The creation of the law depends on him for philosophical or moral values. It is therefore anchored in politics. The study of the law, on the other hand, can be done objectively, without value judgment. This clarification explains why two lawyers may have different positions on the same
case: they use the science of law to determine possible interpretations of the law, consistent with the existing law, but need a personal contribution to choose the one they will support. Kelsen therefore proposes to establish a pure theory of law, free from any value judgment, and encourages legal practitioners to recognize the subjective part of their positions.

Hans Kelsen, born in Prague in 1881 under the Austro-Hungarian Empire, contributed significantly to the development of a new theory of law and the emergence of a science of law separate from politics. Upon entering the legal profession, it is generally accepted that the lawyer must decide on the correctness of the law and determine which right is right. For Kelsen, these tasks are impossible to overcome without resorting to individual political values. The science of law then serves as a voice for several divergent subjective opinions. Kelsen's goal was the empowerment of law, its separation from politics, its objectification, hence its call for a pure theory of law. The scientific definition of law proposed by Kelsen will make it possible to distinguish between the discordant voices of jurists the common point which is the true science of law. The existence of a science of law is primarily conditioned on the use of strict rules of logic. If the jurist wants to establish a true science of law, it must be considered as a unit. Its internal contradictions must be eliminated so that a real general theory of law can emerge.

A difficulty arises when deciding between two divergent legal standards. The unity of the right is only possible if at least one of them is eliminated. In order to determine which one is to be suppressed, Kelsen proposes to look for which one is in contradiction with the most general legal norms. To choose between two general standards, one must resort to more universal ones. In order to avoid going back to infinity, Kelsen is led to consider the existence of a fundamental norm for choosing which conflicting norms to eliminate as a necessary condition for the existence of law as a science. If the jurist refused to accept such a norm, he could not find unity in the law and would therefore be logically unable to make law a true science. Kelsen therefore defends, in the name of science, a state of law where legal norms are organized according to a hierarchy that the jurist can and must identify, all subject to respect for the constitution. The law is thus separated from political ideologies. The lawyer, as such, must consider the law in its unity and its internal
coherence without involving a value judgment. The science of law is thus separated from the creation of law, which depends on philosophical or political values.

For Kelsen, a fundamental difference between the science of law and other sciences lies in the nature of the object of his study. If an exact science studies the natural laws of causality, the law deals with the human laws which are artificial and ontologically distinct from causality. The law of gravity implies that a stone necessarily falls to the ground if it is released, regardless of any human will. The law, object of study of the science of the law, is on the other hand composed of laws which find their sources in the human will. To separate the law completely from political convictions would therefore have no meaning. But it remains possible to separate its study. If politics necessarily plays a role in the creation of law, this does not imply that the jurist, who studies law without creating it, must let politics enter into his science. This distinction between creation and study of the law could be undermined if one accepts that legal practitioners are very often creators of law.

The judge, in rendering his decision, creates a new norm, binding in the case concerned. This standard is a precedent that has become an integral part of the law that science is studying. The lawyer, who tried to influence the judge, also participated in this creation. But here we must distinguish the science of the law from the profession of those who use it. The judge and the lawyer use their science to know the various conclusions that they could choose to adopt in coherence with the law. On the other hand, when they choose their conclusion among all the possibilities, they leave science to enter the legal policy. Pure science does not intervene in the creation of the new law; it only studies law as it is. Kelsen thus calls on jurists to recognize the part of subjectivity inherent in their positions. But in doing so, he gives them a certain freedom. Since science is unable to determine what is the only true interpretation, the judge, as a representative of justice and not as a jurist, can choose according to his values the decision he will make. It can be added that this freedom is accompanied by an important responsibility.

The judge and the lawyers involved in the decision-making are creators of a judgment that will enter into law and jurisprudence. This will have repercussions on all subsequent
judgments, since the new right thus created must be taken into account. In this conception of law, the role of the practitioner differs from that of the theorist. While judges and lawyers are involved in interpretations giving rise to compelling norms, the scientist receives these standards as data. Thus, although a scientific knowledge of the law is necessary to the practitioner, he cannot fully exercise his profession without a personal contribution of legal policy that should be clearly distinguished from the science of law. It is this contribution that makes it possible to explain that two jurists can support two distinct positions while their science is identical.

2. RONALD DWORFIN'S THEORY

The legal theory of Ronald Dworkin (1931-2013) is a questioning of the legal positivism inherited from Kelsen. Dworkin postulates that the law cannot be limited solely to the rule of law. In his theory and practice, the law should also draw from morality the elements for its improvement. The use of morality, according to Dworkin, will allow the law to reduce the excesses of positivism by favoring the realistic interpretation of the law as a whole. The whole here refers to the law, the case law, the legal custom and even the general principles of law.

Here Dworkin puts a lot more emphasis on the role of the judge. This role is that of the interpretation of judicial cases.

Dworkin highlights three essential elements in his theory. First, it is the theory of principles, then that of interpretation and finally that of right-integrity.

**Theory of principles** orients the theory of interpretation and the right-to-integrity, since it is principles of justice or morals that are beyond legislative norms and the foundation of any correct interpretation of the law. These principles are also the basis of a legitimate legal theory. Many past experiences provide ample information about the inability of individuals and states to make decisions about major human rights compliance or protection decisions. Without the recognition of natural law that justifies the basic principles of a just right, man is moving towards ruin.
On the other hand, natural law, the basis of these principles, also justifies a fair practice of law. Indeed, the position supported by Dworkin leads us to give back to natural law its importance, because it is he who justifies the legitimacy of justice that is not only based on facts but on principles and values that determine horizon of the interpretation of legal facts. What would be the value of the law without moral principles that justify it and even found it? It is to this question that Dworkin reflected and tried to answer through all his legal-philosophical and philosophico-judicial work.

While Habermas and Dworkin's rapprochement is found in Habermas's analysis is based on the principles of fundamental rights (human rights) and the principles of the democratic state, and for Dworkin on the other hand the law is based on the moral principles that determine the activity of the judge.

Dworkin's contribution to the law through his method of interpretation is explained by the fact that the conflict of interpretation in law results both from conflicts related to the judge's (political or legal) convictions. This contribution goes beyond the simple conventionalism of the law or the simple legal dogma.

In the end, in the line of Dworkin, one can argue that legal positivism does not make it possible to answer all the questions that the law poses today. Second, the state is no longer the only frame of reference when one wants to think about law, but it results from a polycentric entanglement of acts of very different natures, also produced by actors of equally heterogeneous nature. Also, it is not applied linearly from top to bottom. Finally, legal systems are not quite organized systematically; this is why other conflict resolution mechanisms are emerging more and more.

The right-integrity is the model that transforms the external law, that is to say the positive formal law, into an awareness of justice. This model transforms the ideal of justice into a justice that permeates the daily behavior of the legal subject. This right creates an awareness of justice, a just right.

For there to be a success of the law in its end, it is necessary that the judicial conscience of the judge is allowed to penetrate by the principles of justice which are otherwise extra-legal principles. If this impregnation / compenetration becomes real or effective, the law
will have achieved its goal of justice. This is not, of course, justice that is expected of the courts, but justice internalized in the legal conscience.

As can be seen, Dworkin's legal theory of integrity is more ostensibly open to other systems of law and justice that are not based on the state. These systems form a group that is found in other legal areas, such as in Africa or elsewhere, and which rely essentially on other rationales than legal positivism.

4. References and Further Reading

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