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# Systematic Interpretation and Re-Systematization of Law: The Problem, Co-Requisites, A Solution, Uses

The problem of this paper is a renewed search for legal certainty, observable in recent writings, which is oblivious of both systematic interpretation (hereinafter: SI) and the need of re-systematization of law (hereinafter: SL, RSL).

(1) The delimitation of the problem is made in two steps. Section 1.1 explains the search as a reaction to the preponderance of judge made law, which has been in turn prompted by the democratic deficit of the EU and the impact of Anglo-American law. Section 1.2: defines SI as the primary and the only genuinely method of interpreting law in the continental European legal tradition, and relates the definition to standard French and German conceptions; indicates the room for SI in Anglo-American laws; states prima facie reasons for RSL as the prerequisite of SI; points out that although SI presupposes the concept of a legal system, the latter is in disarray.

(2) The problem cannot be appreciated outside its proper context. It is a disregard for causation and evaluation, which has plagued continental European legal thought in practice as well as in theory. Hence the preliminary tasks, whose performance should create co-requisites of the concept of a legal system and a RSL. To that end the paper outlines Aristotle's understanding of causation and evaluation in his presentation of phronesis (s. 2.1-2.2), reconsiders continental European legal thought in light of Aristotle's presentation (s. 2.3), and offers policy oriented jurisprudence as a remedy to the deficit of evaluation and causation in European legal thought (s. 2.4).

(3) A solution of the problem offers a typology of criteria useful for the purpose at hand (s. 3.1 distinguishes defining, non-defining and evidentiary criteria), clarifies positive and fundamental legal concepts (s. 3.2 demonstrates that there are positive legal concepts whose meaning cannot be determined by legal acts alone and for that reason require completion, which can be performed best by fundamental legal concepts; s. 3.3. argues that the latter, e.g. concepts of a legal order or a legal subject, are ideal-types rather than meta-concepts, since a meta-language cannot be construed) and positive and fundamental criteria of systematization (s. 3.4 points out that SI determines the meaning of a law primarily by taking into account positive definitions and divisions of law; s. 3.5 claims that if a fundamental legal criterion, which is also an ideal-type, is not informed to a high degree by positive law it is of limited use in legal science and practice), and outlines the function of criteria in knowledge of law (s. 3.6 uses the two kinds of criteria to distinguish legal dogmatics, legal history and theory as functions rather than disciplines of legal science).

(4) The concluding section, which should demonstrate usefulness of the criteria in previous sections, outlines a common approach to systematization of law on the basis of a source or procedure, a content or substance, a consequence or function (s. 4.1), argues that Michel Villey’s diagnosis of the defect of SL is correct but misnomered, since it is concerned with legal capacities rather than legal rights (s. 4.2) and concludes that the reason why legal theory has failed to notice that the problem of a right, including a human right, is in fact the problem of the legal subject is twofold: the disappearance of the legal subject from legal theory; the failure to clarify the relationship between a legal rule and a legal right (s. 4.3).