

BOOK REVIEWS / COMPTES RENDUS

Laurent de Sutter, *Deleuze. La pratique du droit*. Paris: Éditions Michalon, 2009; 124 pages. ISBN 978-2841864829.

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Many a time, the readers of Deleuze have had the opportunity to notice that his critique of the Law and his desire to be done with judgment (*pour en finir avec le jugement*) are often followed by an appeal to the art of jurisprudence. It is as if the latter represented the way out of law and judgment and the only constructive alternative to both. But until recently Deleuze's commentators have not exactly lavished on their readers their efforts to explain how exactly jurisprudence is supposed to live up to the promise that Deleuze did place on it. Laurent de Sutter's *Deleuze: La pratique du droit*, published in 2009 in the series "Le Bien Commun" of the Éditions Michalon, breaks the long silence by defiantly proclaiming that Deleuze's philosophy of Right has nothing to offer the jurist other than sending her back to work with a clear conscience: *jurisprudence has no need for philosophy to flourish*.

With his book, de Sutter attributes to Deleuze's critique of the Law and to his positive reception of jurisprudence the intention to show the fly the way out of the infamous bottle: *libérer le Droit de la philosophie!* (68) In its first part—the part of the critique—de Sutter discusses Deleuze's view that the Law is capable of being thought only humorously. The classical image of Law gives the Law a place between *the Good*—its foundation—and the *Best*—its consequences, the reason for our obedience. Its modern Kantian image, on the other hand, subsumes the Good under the form of the Law, pronounces the consequences of our actions irrelevant to their moral value and proves equally irrelevant our opinions as to whether obedience to the law is or is not for the Best. The classical image, in de Sutter's opinion, "requires a lot of irony to raise the Law to the absolute Good as its founding principle," and "a lot of humor to bring it down to the relative Best that convinces us to obey."

(22) This image contains the seeds of its own deconstruction because, as soon as the Law needs crutches in order to function, the Law is no longer the Law. In the case of the modern image, law means the form of the Law; hence, to the extent that nothing other than this form qualifies it as law-ful, the essence of the Law is always to flee its “proper” place—to be always absent from its place. (24) Freud and de Sade, writes de Sutter, presuppose the Copernican revolution of the modern image: The Freudian paradoxes of holding moral conscience to be the effect of the repression and sublimation of the drives, and Law to be nothing but the repressed desire could never make sense without it. (26) Similarly, de Sade’s appeal to an evil nature the most adequate expression of which is the Law and the elevation of the principle of Evil to the place formerly occupied by the Good is the reconciliation of law and nature that Kant’s transcendentalism was dreaming about but had failed to achieve. (28)

In both the classical and the modern image, the Law, according to de Sutter who, in this, follows Deleuze, is conceived and subsequently criticized in the spirit of the comic. The disciples of Socrates, for example, laugh when the verdict of his trial is read (22–23); de Sade opts for the principle of Evil and restores the throne of the higher principle that Kant had brought down; Sacher-Masoch, with his demand for strictly enforceable contracts, rehabilitates the Best in the face of the consequences of our obedience to the Law; Kafka refutes the claim that it is transcendence that renders the Law unknowable, attributes instead the unknowability of the Law to its being always already *elsewhere*, and re-establishes the Law’s innocence in opposition to the guilt that had functioned as the horizon of the Kantian imperative. The tragic (according to the reading of Massimo Cacciari’s *Icônes de la loi*) Kafkaesque realization that the law necessarily involves a decision and that no decision can ever be grounded makes Kafka laugh; and, finally, Bartleby, with his negativism and slapstick humor (according to Zourabichvili’s reading in “Deleuze et l’ impossible,” *Gilles Deleuze, une vie philosophique*), makes the law collapse on its own accord and transforms its critique into positive indifference. In all these cases, de Sutter concludes, the Law—whether grounded or ungrounded—is being exposed to irony and humor, that is, to the twin figures of the comic. Nor does the author let us forget Proust’s *jeunes filles* that no longer criticize, but help and save instead, earning as a result a *place d’honneur* that could perhaps sustain itself beyond the realm of critique.

The reader will find in the first part of de Sutter's book some very helpful hints as to what Deleuze means to say in the scant passages of his work where he speaks of irony and humor. That he speaks of irony in terms of an ascent to principles and of humor in terms of an art of surfaces and as a descent to consequences we have known from his books on masochism and from *The Logic of Sense*. But it is in de Sutter's book and in his discussion of all those who contributed to the deconstruction of the traditional images of the Law that the reader has the opportunity to learn how the two tropes—irony and humor—can be transformed into sharp tools of an effective critique. Irony, whether Socratic or modern and romantic “is the expression of a desire of *rectification* of what, in the case of the individual, looks like a deficit. But this deficit is bound to be for ever active because only the individual's disappearance inside the Idea would be capable of ever healing it.” (35) Humor, on the other hand, is “the descent along the length of a surface...with no other signification than the ever more rapid multiplication of the consequences to which it leads.... Humor is another way of referring to the attitude of the one ready to welcome an event in all the arbitrariness of its sense.” (37)

There must be a counterpoint to criticism if the latter is not to become total and therefore pointless. For Deleuze, this counterpoint is jurisprudence. The second half of de Sutter's book, therefore, moves from the critique of Law to the clinic of Right. Instead of focusing on the application of Law or on legal judgments in the making, it shows Deleuze's interest in the creation of Law. In opposition to the old image of Law, which presumes that legislation regulates cases subsumed under it and that its *raison d'être* is the institution of a generalized pastoral care, de Sutter, following a Humean line of argumentation, claims that legislation consists in the constant invention of relations between individuals, societies and institutions. Laws and institutions are positive tools; rather than being limiting or organizing, they spread like rhizomes. The method of the lawmaker is association; nothing else matters to her except association, because her objective is the creation and proliferation of relations and connections between things and beings. A legal precept is assessed on the basis of its ability to stand alongside other existing relations and to produce something new. Jurisprudence then is the taxonomy of cases and grows through the extension of singularities. Being indifferent to laws, principles of justice and institutions, jurisprudence, writes de Sutter, “gives account only to life—whose juridical expression it is.” (101)

Were we to search for principles, the principles of jurisprudence that we would find would be plastic and mobile—no broader than what they condition. In the case of jurisprudence, principles, if they ever exist, come always at the end of the associative inventions. They are transformed according to what they condition and they are determined by what they determine.

It is at this point that de Sutter formulates the *mot d'ordre* which, according to him, expresses the reason behind Deleuze's elevation of jurisprudence to the place of the savior of the honor of thought. *Il faut libérer le droit de la loi, c'est-à-dire de la philosophie! We must free the Right from the law, that is, from philosophy!* (68) The formulation of the *mot d'ordre* comes in three steps: the Kantian emancipation of Right from the Good facilitates the axiomatisation of Law, preventing the coding of the custom and the overcoding of the Despot from functioning as the grounds of our obedience and respect for the Law. In the sequence, the transition of our societies from discipline to control secretes a Kafkaesque image of Law and Right that results in a crisis of axiomatisation: the table of axioms can no longer be completed and, as we know, an incomplete table offers no guarantees that the set will stay consistent whenever new axioms are being added to it. Finally, and as the outcome of steps one and two, four challenges begin to erode the axiomatised set of laws from the inside. *Legalism* focuses on the creation and differentiation of illegalisms (not everyone's acts are legal or illegal in the same way) and the ensuing proliferation of exceptions. *Naturalism*, after Hobbes, conceives society as a defence against a war-ravaged state of nature and multiplies rights rather than duties. *Consensualism* introduces a long series of subjectivations/subjections that culminates in the subjection of the subject itself to itself. *Institutionalism* starts from a position where institutions are above the law because they are the ones that determine what is right and end up functioning as the police of the law because organization is law's own exigency.

We must then free Right from philosophy! We must abandon the axiomatic practice (the responsibility for which goes to philosophy) for the sake of a "topical" one: Instead of the axiomatic practice where the conjunction of laws is worked out for the sake of political or economic considerations and motives, the associations of the "topical" practice are pursued for the sake of a "robust technique" that succeeds in producing new juridical relations and "revolutionary connections"—nothing more.

(106) Deleuze, de Sutter writes, has no intention of praising or blaming courts and tribunals: sanctions and norms are alien to jurisprudence. Far from being a mere practice of “application,” “interpretation,” or even “creation” of rules and norms, “the practice of law...is a practice of imputation. There is no ontology in those statements of imputation. There is no content. There is only the effect of words that allow things and people to stick together.” (97) Instead of giving us a humanist philosophy of Right, Deleuze offers a nihilist one, in the sense that Nietzsche understood nihilism. (114–15) Nevertheless, if it is not of any use to the jurist, this nihilist philosophy of Right is meant to be of use to the philosopher. In *The Fold*, Deleuze, following in the steps of Leibniz, assigns to jurisprudence (universal jurisprudence) the role of becoming philosophy’s model and philosophy’s future by realizing the program of philosophy—the replacement, that is, of laws by mobile and flexible principles and singular cases. (102–103) This was the program of casuistry before philosophy tilted jurisprudence in the direction of axiomatisation. “*Libérer le droit de la loi, c’est-à-dire de la philosophie*” invites us, therefore, to re-establish the innocence of the Law.

Now, all these claims are embedded in a broader research project and a political agenda that de Sutter develops and defends elsewhere. For a more complete understanding of this research project and political agenda, the reader may consult de Sutter’s essay “How to Get Rid of Legal Theory,” which appeared in the proceedings of the *Lund 2003 Symposium, Epistemology and Ontology*. All that I can do here is to signal de Sutter’s indebtedness to Bruno Latour’s impressive work, *The Making of the Law*, whose ethnographic study of the French *Conseil d’État* has inspired the construction of jurisprudence as it should be—de Sutter calls it “speculative jurisprudence.” (De Sutter’s indebtedness to Isabelle Stengers’ work, “Une pratique cosmopolitique du droit est-elle possible?” should not go unnoticed either). Latour writes “Wanting to define law by means of rules” writes Latour, “is like reducing science to concepts.” (*The Making of the Law*, 269). And further: “Let us begin law at the beginning, that is to say, at the stamps, elastic bands, paperclips and other office paraphernalia which are the indispensable tools of cases. Jurists always speak of texts, but rarely of their materiality. It is to this materiality that we must apply ourselves.” (71) By all means! Let’s apply ourselves to materiality. But let us not jump to de Sutter’s conclusion that “there is nothing to know about law. There are only things to do.... As a

word, 'law' is without any content; without any 'knowable' content.... What is important with the word...is the effect of it.... The legal effect is not a mere effect of language. It is not a type of effect among others.... The word 'law' designates the moment when a word has an effect...." ("How to get rid of Legal Theory")

De Sutter's book mobilizes a critique and a clinic, which, in their eagerness to emancipate law from philosophy, do not allow jurisprudence to go as far as it can. As an invitation to explore the neglected topic of the relationship between Deleuze, law and jurisprudence, it breaks new ground and must be read by all those interested in Deleuze's political philosophy. But to the extent that it represents a reading of Deleuze that celebrates without hesitation Godard's invitation, "*pas des idées justes, juste des idées,*" it forecloses all discussion of confirmation, and must be read with critical lenses well focused. By "confirmation" I mean a process by means of which epistemic and in some cases ethical constraints placed upon the concepts we construct match the constraints inscribed in the rhythms and the articulations of the real. It is true that a true constructivist agenda, like Deleuze's, cannot tolerate tribunals of reason. I subscribe to Shaviro's reminder that "Deleuze's criterion is constructivist rather than juridical, concerned with pushing forces to the limits of what they can do, rather than with evaluating their legitimacy." (Steven Shaviro, *Without Criteria*, 34) But I do not think that abandoning the juridical model means giving up on all quest for confirmation. It is not to create tribunals of reason to suggest that concepts and the real have rhythms of their own that must be respected, nor is it falling back onto a logic of representation to ask that our mapping of the real take into consideration epistemic and ethical norms. After all, creativity and the quest for the new have consequences, and not all of them are worth shouldering. My claim is that were it the case that law and jurisprudence have nothing to do with concepts and norms, any search for confirmation would be dead before it got off the ground.

Demoralizing the law *pour en finir avec le jugement* sounds like a good idea as long as what we want is to avoid the sterile dialectics of good and bad conscience. But this does not require the purification of the law of all norms and standards. The demoralized law, which, supposedly, can do without norms of justice and fairness (111) is still subject to standards and norms, every bit as rigorous as the ones we tried to leave behind—except that these standards are now, in terms of their content,

epistemic. A moderate attention to the sense of “law”—as in “the rule of law”—suffices to restore the law’s content and knowability. Michael Neumann, in his book *The Rule of Law*, chooses to expend this moderate attention and comes with the following conclusions. A precept cannot be a law unless the constraints it imposes can be avoided when the law is followed—let this be called “*avoidability*.” A law is subject to the *feasibility* of the “ought implies can.” No law can escape the obligation to show that its requirements have or have not been met—*provability*. Everyone should be able to understand what the law means—public *observability*. Or again, the *effectiveness* of a law depends on the apprehension and punishment of a sufficient number of violators (and sometimes innocent ones). These are epistemic norms—with moral effects—and their absence would invalidate the law and would render jurisprudence monstrous. “To insist,” Neumann writes, “that I be treated according to instructions addressed to me rather than simply be pushed around is to require a certain structure of understanding and expectation wherein all laws are, so to speak, in common language and, therefore, knowable.” (Neumann, *The Rule of Law*, 51)

Jurisprudence is neither innocent nor guilty, but this does not prevent it from having everything to do with norms and constraints, even in a Humean context that situates the Law’s primary task in the extension of relations and associations. (For a demonstration of this point, the reader should refer to Alexandre Lefebvre’s recent publication, *The Image of Law: Deleuze, Bergson, Spinoza*.) In fact, jurisprudence has a lot to teach us, philosophers, not because it shows us how to get rid of judgment—it does not—and not because its mobile concepts are best suited to the irreducible singularity of all legal cases (they are not), but rather because it foregrounds the question of confirmation and strengthens our resolve to get it right, because judicial errors, unlike questions of taste, cost lives and ruin reputations.