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# THE CENTRALITY OF SOCIAL RIGHTS TO INTERNATIONAL LEGAL ORDER: REFLECTIONS ON ALAIN SUPIOT'S *L'ESPRIT DE PHILADELPHIE*

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## ABSTRACT

This article is a critical examination of a recent work by Alain Supiot, a French legal philosopher and labour law expert entitled *L'esprit de Philadelphie*. The work in question provides a useful overview of some of Supiot's major concerns. The focus of the article is on the philosophical aspects of the book as they relate to the modern understanding of the 'rule of law' and 'human rights'. It will be argued that although Supiot's Hegelian influenced conception of the 'rule of law' provides a useful critique of the contemporary neo-liberal ideologies, and an important reminder of the centrality of social rights to any viable understanding of the rule of law, important questions remain as to whether Supiot's conception of the rule of law offers a genuine alternative to the calculative thinking, destructive of the reality of the human person, which forms the basis of his critique of neo-liberalism. The article raises questions as to whether the existential reality of the human person is something so radical that it undermines the validity of *any* modern conception of human rights. The article concludes with an invocation of a form of legal thinking closer to rhetoric than to the predominant 'dogmatic' and 'representational' understanding of legal order.

**KEYWORDS:** ALAIN Supiot, rule of law, human rights, social rights, neo-liberalism, Hegelianism, individual

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Alain Supiot, one of France's leading philosophers of law and an expert in French and European labour law, has in a recent book entitled

*L'esprit de Philadelphie: la justice sociale face au marché total*, provided an elegant summary and synthesis of the major ideas underpinning his contributions to both these fields.<sup>1</sup> A work which combines both scholarly erudition and the commitment and fecundity associated with writing in the genre of the 'political manifesto', *L'esprit de Philadelphie*, focusing on one of the International Labour Organization (the ILO's) foundational legal instruments, opens up new ways of thinking about the importance of 'social rights' in the development of a viable international legal order; an importance which, as the author shows, has been dangerously occluded by the dominance of what might somewhat provocatively be termed a neo-liberal 'doxology' of the 'total market'. In this respect, the term 'doxology' attempts to convey both the sense in which the belief in the benefits of market ordering has attained the absolute qualities of an almost religious faith and the way in which this belief is embedded in a complex set of practices and discursive forms, so as to reinforce that belief in a manner analogous to the liturgical practices of religious faith. According to the argument developed by the author, neo-liberal economism is but the latest incarnation of a type of scientistic ideology, central to various twentieth (and now twenty-first century) totalitarian political projects and characterized by the reduction of the concrete dignity of the human person to a fixed biological, social or economic identity. As Supiot himself puts it: '*La croyance en un monde régi par le calcul d'utilité a succédé aux scientismes d'avant-guerre, qui entendait régler le gouvernement des hommes sur les lois de l'histoire ou de la race. Se poursuit ainsi sous une forme nouvelle, le rêve ancien de pouvoir gouverner les hommes comme on gère les choses.*'<sup>2</sup> For Supiot, the importance of the international human rights instruments instituted as part of the settlement concluding the Second World War, and in particular, the social and labour rights contained in the Philadelphia Declaration of 1944, is precisely the will embodied in these texts to re-instate the principle of human dignity and an associated concept of social justice as the basis for legal order. In what follows, I would like to contribute to the 'human rights' theme of this collection by reflecting on this important attempt to recover the fundamental

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1 A. Supiot, *L'esprit de Philadelphie: la justice sociale face au marché total*, Seuil, Paris 2010.

2 *Ibidem*, p. 76.

meaning of our contemporary human rights instruments. This article will not provide an exhaustive overview of the book as a whole, the first part of which is concerned with a history of the events through which the current neo-liberal orthodoxy emerged and the second of which is concerned with developing the various ramifications of the concept of 'social justice' that Supiot claims informs the ILO's Philadelphia Declaration. Rather, the article will focus on the philosophical issues the book raises regarding human rights, international order and indeed law in general.

We might usefully begin with what could be seen as one of the most important conceptual links developed by Alain Supiot in this book; namely, the relationship between the principle of 'human dignity' and the idea of *le Droit* in opposition to the idea of *la Loi*.<sup>3</sup> This essentially Latinate and civil law distinction between *Droit* and *Loi* is one that is difficult to make both in English and in the language of the common law. The distinction at one level is capable of being translated as the difference between the law in general (*le Droit*) and statutory law (*la Loi*). This translation, however, fails to capture some of the nuances of this distinction: precisely those nuances which Supiot exploits in the development of his argument. Before going further with this point, it is worth noting that this apparently preliminary terminological point in fact obscures a somewhat deeper issue as regards the nature of the contemporary international legal order and which Supiot himself raises at various junctures. The dominance of English as our current *lingua franca* and, to a more limited but growing extent of the juridical conceptual techniques of the common law, ought not to be seen as a straightforward matter of convenience. If, as will be seen, important and very specific ethical/political meanings can be conveyed through a distinction which is impossible or at least difficult to render in our contemporary *lingua franca*, this in itself seems to be of worthy of further thought.

With this issue in mind, we can return to the exposition of this *Droit/Loi* theme: the nuances of the term which we need to evoke here are perhaps best introduced by an example: the normal translation of Hegel's *Rechtsphilosophie* as *Philosophie de Droit* (in English it is rather more awkwardly 'Philosophy of Right'). Although we might say that *Droit* can mean law 'in general', both Supiot and Hegel, intend to bring

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3 This distinction is set out in the introduction to *L'esprit de Philadelphie*.

into play the idea of law as the distinctive order of an 'ethical community'; i.e., a community based on a recognition of the principle of human dignity. We will return to the question of the specific content of this conception of ethical community later; for now, the crucial point to note is the contrast which Supiot is prepared to draw between the sort of community which finds itself on the law which it makes for itself (*Droit*), and the sort of group constituted in accordance with a *loi* not of its own making. In terms of the latter category of law, Supiot has in mind two types of law in particular: the 'revealed law' of a religious tradition (where the religious community is constituted by God) and the sort of apparently 'scientific laws' of human behaviour (biological, economic or social) and in relation to which human legislative activity is assumed to be epiphenomenal. The first of these types of law is perhaps more ambiguous, for Supiot's purposes, in that different religious traditions have recognized, to varying degrees, the capacity of human agency and particularly human reason to recognize and follow those laws which can be regarded, from a different point of view, as revealed. In any case, his point is that there is a crucial analogy with the category of 'divine law' and the apparently scientific laws invoked by totalitarian ideology: for both, the fundamental laws regulating human life are taken as 'given' rather than as the product of human agency. In the context of this type of thinking, the 'mere legality' associated with laws of clearly human provenance are never accorded priority, and can always be set aside in favour of the prior scientific or divine law. The crucial difference, of course, is that in the case of 'scientific laws' of race and economy and so on, the creative dimension of human personality is excluded not only at the level of the provenance of the norm, but also in terms of its content as the human personality is reduced to a reified set of attributes. For Supiot, the recovery of a social order based on human dignity, implies a re-valorization of the concrete processes of mutual recognition, deliberation and contestation constitutive of *le Droit* which would in turn form the basis of an ethical community. The exclusion of the possibility of thinking about law in terms of *Droit*, as the encompassing structure of rights and obligations embodying the ideal of human dignity (the 'rule of law'), leads to the reduction of law to a relatively inchoate system of positive law. This reduction of law to positive law prepares the way for the increasingly global phenomenon of 'regulatory law' (facilitated as we have mentioned by the fact

that the ‘nominalist’ quality of English has little room for indicating the ‘universal’ aspects of legal order). For Supiot, ‘regulatory law’ is intimately connected with a scientific conception of law in so far as it is intended to ‘communicate’ signals to alter patterns of behaviour; it does not form part of an on-going civic ‘conversation’ over the common rules of existence.

Returning to Supiot’s conception of the relationship between law, community and human dignity, it should be noted that although I have introduced Hegel’s *Rechtsphilosophie* to elaborate the point, Supiot does not himself refer to his work. In general, Supiot puts forward his reflections on legal order on the basis of his own authority. A closer examination of his major book on legal philosophy reveals the influence of Lacanian psychoanalytic theory filtered through the work of Pierre Legendre, which provides a thought-provoking synthesis of Lacanian psychoanalysis, legal theory and canon law history.<sup>4</sup> Lacan and Hegel are in fact closer than might first appear (in fact Lacan was one of those who attended Alexandre Kojève’s influential lectures on Hegel). Both stress the importance of a wider ‘symbolic order’ or ‘ethical community’ in the constitution of the identity of the subject. In fact, it is one of the central themes discussed by Pierre Legendre, whose works examine the failure of modern Industrial Society to put in place a symbolic order adequate to the task of forming human subjects. The major difference with Hegel would appear to be the Lacanian concept of ‘the Real’; that awkward ‘reminder’ which is left over from the failure of symbolic order to provide a completely coherent conception of meaning and subjectivity. This of course is not to deny that the same tension is not accounted for by Hegel in a different way; namely, in terms of the dialectical process that undermines various civilizational forms, and which generates ‘history’ in the Hegelian sense. In Legendre’s work the ‘Real’ is also recognized; however, his training as an historian of canon law, leads him to stress the resilience of the capacity of the more sophisticated forms of symbolic order, such as medieval canon law, to ‘gloss over’, quite literally, the effects of the Real. Returning to Supiot, the Hegelian traces in his work, filtered through the influence of Lacan and Legendre emerge in his defence of a certain form of juridical thinking characteristic of

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4 See in particular P. Legendre, *L’amour du censeur: essai sur l’ordre dogmatique*, Seuil, Paris 1974.

the modern secular nation-state: ‘juridical dogmatics’. In contrast with a scientific ‘regulatory system’, ‘juridical dogmatics’ provides a space in which a symbolic order can be *negotiated* between citizens and subject to interpretive adaptation to the facts of specific cases. Thus: ‘*A la différence de la dogmatique juridique, dogmatique consciente d’elle-même et ouverte aux ressources de l’interprétation, les dogmatiques scientistes ne se reconnaissent pas comme telles et sont parfaitement imperméables à toute espèce de critique extérieure.*’<sup>5</sup> A social order instituted through a juridical order is also one where the ‘measure’ of that order is not merely one of ‘scientific’ calculability but is rather a qualitative evaluative measure involving both a cognitive reference to facts as well as a reference to a norm.<sup>6</sup> A further implication of both these points for Supiot is that law is necessarily local rather than universal in character, this necessary ‘relativity’ or ‘locality’ of legal order derives from both the requirement for negotiation over norms and the requirement for norms to be concrete and qualitative. For Supiot, this ‘local’ character of legal order is ultimately expressed in the historical importance of the nation-state.<sup>7</sup> When Supiot discusses the role of ‘international law’, he is discussing not so much a tier of law intended to replace the nation-state, but rather a system designed to ensure the continued validity and coherence of the nation-state in the light of the threat posed in particular from abstract universals like the neo-liberal ideal of the free market. In this respect as well, it might be said that Supiot is more ‘Hegelian’ than the theoreticians of global order and the end of history like Kojève and his epigones.

Of course, the attempt to re-evaluate the principle of the ‘rule of law’ in the face of the various totalitarianisms of the twentieth century has been the subject of a much wider reflection. Paradoxically, the importance of market order in ‘neo-liberal’ economic theories, was itself, at least in the works of its most sophisticated theorists, presented as *the* antidote to totalitarian thinking.<sup>8</sup> For thinkers like Friedrich Hayek, for

5 A. Supiot, *op. cit.*, p. 93.

6 *Ibidem*, pp. 115–116.

7 *Ibidem*, pp. 97–98.

8 However, we need to be careful to distinguish between the historical meaning of neo-liberal theories, as supports for Thatcherite or Reaganite policies of de-regulation and neo-liberalism as a form of philosophical reflection on freedom, market, economics and politics.

example, the institution of the market was the only way to reconcile individual freedom and stability in what he famously termed a ‘spontaneous order’. According to Hayek, any other institutional order, no matter how benign it might be to begin with, would necessarily have to sacrifice individual freedom for the sake of maintaining an order which, in the absence of the price mechanism, would itself be a difficult task to achieve. Thus, far from attempting to deny the ‘rule of law’ tradition, the neo-liberal thinkers attempted to re-define it in terms of the legal presuppositions of the spontaneous market order. However, Supiot’s discussion of neo-liberalism largely places it in the context of an historical analysis devoted to explaining its ideological role in the constitution of a new global economic order.<sup>9</sup> At a more philosophical level, his critique of neo-liberalism seems, once more, to take something of a Hegelian turn, which should, however, not mask his force. The core problem is the formalist definition of individual freedom, the dependence of ‘freedom of contract’, ‘property rights’ and so on, on a complex network of material pre-conditions. From a similar point of view, but in addition, it might be added that the concept of a spontaneous market order promises a kind of ‘progressive’ or ‘global’ benefit to be gained through the acceptance of market disciplines. At one level, this poses a very difficult problem of political management: how to impose the ‘costs’ of market disciplines at junctures where the long-term ‘benefits’ of market ordering may be too distant. This apparently pragmatic argument is in fact underpinned by a deeper philosophical issue concerning how we should understand market economies. The point in question, raised by Supiot himself, was initially developed by Karl Polanyi and was explained by that writer as relating to the tensions produced by the ‘legal fiction’ of treating as commodities goods like land, capital and in particular labour, ‘goods’ which were not in fact produced as a commodity.<sup>10</sup> For both Supiot and Polanyi, there is a danger in

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9 The intertwining of historical and philosophical analysis can sometimes create difficulties. Although there is certainly a case for made for placing Hayek’s work in the context of the development of the contemporary forms of global capitalism, he would certainly contest the oligarchic tendencies of these forms which Supiot draws attention to. In that sense, it is perhaps problematic to continue to identify the contemporary realities of the global economy with neo-liberal theory however tempting it is to find a way of labeling the relevant phenomena.

10 See discussion: A. Supiot, *op. cit.*, pp. 59–60.

treating 'labour power' as a resource whilst neglecting the human realities which underpin its existence: the need for security both material and symbolic and the need to secure the transmission of human culture from one generation to the next.<sup>11</sup>

A final more incidental point to note is that Supiot's discussion of Hayek's work is exemplary of Supiot's tendency to interweave historical and philosophical issues. The point of remarking on this is not to say that Supiot failed to make this distinction in a rigid, scholastic and pedantic manner; in fact the oscillation between the historical and philosophical makes for a rich and more 'humanistic' structure of argument; rather, an issue of philosophical substance is at stake. On the one hand, the scientific development of 'regulatory law' might be viewed as 'ideology' in the most basic sense of that term; that is, a discourse adopted by an oligarchical elite in order to exercise control and to present the power they exercise as being in the true interests of the subjects. This would indicate that the 'scientific thinking' is simply the reflection of an 'abstract' mode of thinking, a failure of mutual recognition, which as such might be overcome in a more satisfactory synthesis. On the other hand, there is a more troubling sense in which, even if the trends associated with the increasing importance of scientific thinking might be to the greater and disproportionate 'benefit' of certain sections of the global population, it might be argued that scientific thinking and the consequent trends toward regulatory law are related to the advent of an era of technological thinking which is not so much embedded in a Hegelian dialectic of recognition, but rather is better understood in terms of a more Heideggerian understanding of history, as an event (*Ereignis*) of being. This would evidently be a more troubling conclusion and would, in a certain sense, undermine the conception of the 'rule of law' Supiot is advancing.

Before returning to this last question, the discussion of Polanyi provides an introduction to a crucial dimension of Supiot's argument: the link between the 'rule of law' as the basis for an ethical community based on the recognition of human dignity and the idea of social justice and social rights. The function of social rights and more broadly social law and justice is to place limits on the capacity of markets to treat labour power as a commodity. As Supiot puts it, '*Face au Droit commun des*

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<sup>11</sup> See *inter alia*: *ibidem*, pp. 141–144.



*contrats, qui envisage les êtres humains comme des monads sans chair et sans histoire, le Droit social a fait réapparaître sur le scène des échanges leur inscription dans une chaîne générationnelle, ainsi que leurs détraquements physiques et les liens de solidarité qui les unissent ou les opposent.*<sup>12</sup> Supiot's call for a recognition of the importance of 'social rights' is in essence a call to recognize the specific human understanding of an 'existential security' which is occluded by neo-liberal economic science. It is here that we can see the fusion between the Lacanian and Hegelian elements in Supiot's work. Both Lacan and Hegel stress that the constitution of stable forms of individual subjectivity is a complex historical and civilizational achievement, which market rationality problematically assumes as a given.<sup>13</sup> Another question poses itself here which again casts doubt on Supiot's argument: is the problem of 'existential security' one which 'juridical dogmatism' and the ideal of the 'rule of law' is ultimately unable to resolve?

A final pivotal idea in Supiot's conception of the 'rule of law' and 'social justice' and which opposes it to neo-liberal thinking, is the idea that justice must always involve the intervention of a neutral third party (*le Tiers*), typically the State (again *L'État* in the civil law sense).<sup>14</sup> Thus for Supiot, a further problem is the way in which neo-liberalism attempted to develop a conception of the rule of law without the concept of the State. For Hayek, as indeed was the case for Marx and the Marxist tradition in general, the State or rather the 'statal apparatus' of power could never be the neutral third party, the guarantor of the social contract. Such a 'statal apparatus' is from this point of view problematic in so far as it is liable to 'capture' by the 'rational actors' who happen to be in control of it. Supiot notes how, following on from this classification, one of the 'solutions' proposed by the current regime of European and international law is 'regulatory competition' between states, a form of competition which tends to drive out regimes of social protection. In contrast to this view, Supiot emphasizes the importance of having a neutral third party guarantor of the rules of mutual recognition constitutive of the relationship between autonomous individuals. Supiot argues that in the absence of such a third party guarantor,

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<sup>12</sup> *Ibidem*, p. 46.

<sup>13</sup> *Ibidem*, pp. 92–93.

<sup>14</sup> See *ibidem*, *inter alia* p. 92.

the relations between individuals create a 'feudal' rather than a 'statal' social structure, in which the social bond consists of a network of dependence between the weak and the strong. In Supiot's view, the failure to maintain a conception of statal order in favour of a concept of market order, results in the undermining of markets themselves in so far as the latter are premised on the possibility of a freedom of contract between autonomous individuals. Again, the question is whether the symbolic position of the State here is more imaginary than real. Posing this question need not, of course, mean endorsing the neo-liberal answer.

Returning to Supiot's underlying conception of the 'rule of law', the oscillation between a conception of scientific neo-liberal ideology as an encompassing *Gestell* and a conception of the same ideological framework as in essence a tool instrumental to the dominance of an oligarchical elites as well as the introduction of the problem of existential security in the context of social rights, both require more thought. We discussed above Supiot's distinction between *Droit* and *Loi* as arguably the most important philosophical distinction raised in *L'esprit de Philadelphie*. Supiot notes in this respect, the importance of the German constitutional theorist Carl Schmitt (p. 19). Schmitt's theory of the state of exception, developed in crucial works like *The Concept of the Political* and *Political Theology*, is one of the most sophisticated critiques of the concept of *Rechtstaat* as theorized by German idealism.<sup>15</sup> For Schmitt, legal order was irreducible to a network of principles based on mutual recognition, to *Droit*. Rather, the legal order was founded on the underlying necessity for the sovereign to create, outside the norm, the 'situation' in which the norm could apply, a fundamental juristic act implicit in all forms of law-application and actualized most directly in the state of emergency. There is a danger in underestimating the philosophical importance of Carl Schmitt's work, and presenting it, in more historical terms, as the 'legal theory' of the Third Reich. Certainly, Schmitt's theories participated in an undermining the 'rule of law' and helped prepare the transition to totalitarian government. Nevertheless, it is also clear that Schmitt's reflections on the problem of the exception were not intended to supplant 'the rule

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15 C. Schmitt, *Der Begriff des Politischen*, 2 Auflage, Duncker & Humboldt, Berlin 1963; and *idem*, *Politische Theologie*, Duncker & Humboldt, Berlin 1922.

of law' with a higher divine or scientific law. In fact the opposite seems to be the case. Schmitt's reflections raise some awkward questions over whether human 'dignity', the open-ended character of human nature, undermines *both* scientific regulation of the *bête humaine* and the possibility of universal principles of mutual recognition. For Schmitt, law was irreducibly founded, not on the structures of mutual recognition, but on the ambiguous *ab-grund* or abyss of the uncodifiable political *decision* between friend and enemy. A proper philosophical reflection on Schmitt's work thus reinforces the questions and doubts over Supiot's conception of the 'rule of law', the *Rechtsstaat*, which we elaborated earlier.

To conclude, the course of Alain Supiot's reflections on the perilous future of international law and the very real and immediate threats to human dignity posed by dominant ways of conceptualizing legal order, are ultimately underpinned by a deeper, and in crucial respects, more intractable problem of the relationship between philosophical reflection and legal order. As Supiot has shown the demands of an apparently transcendent *Loi*, tend to undermine the dignity of human beings and in particular their capacity to put a reflective distance between themselves and the various ways in which they happen to organize their common life at any particular time. At the same time, the persistence of the priority of *Loi* over *Droit*, insistently recalls the theologico-political problematic posed with acuity by Leo Strauss in the context of his reflections on the totalitarianisms of the twentieth century and elaborated as a commentary on the parallel tensions between the tradition of Socratic philosophy and the Athenian *polis*. We can put this problem in stark terms: the question is whether legal order, *le Droit* is capable of being founded on the transparent principle of human dignity alone or whether legal order will always need to be shored up, *behind the scenes*, by the 'absolute presupposition' of a *Loi* capable of reckoning with the limits of the possibilities of legal order in the face of what perhaps ought to be seen as the perennial problem of existential insecurity, a human condition which neither science nor even an apparently more subtle process of mutual recognition embodied in the *Rechtsaat* can contain or assuage. In this respect, we might say that one of the further questions for those concerned to take up the challenge of Supiot's work is to reflect on the relationship between the principle of human dignity and what can only be termed, the 'existential' problem of human finitude. As we have seen

this question of 'finitude' and 'existential (in)security' goes to the straight to the heart of the 'material' demands raised by any scheme of social rights. In this respect, whilst we might agree with the way in which the Philadelphia challenges the assumption that human dignity does not imply certain material pre-requisites, we must ask ourselves whether any kind of 'material', calculative or representational thinking no matter how qualitative or concrete can do justice to the uncanny and unassimilable character of human existence, that which is *unheimlich*. At stake then is the difficult question whether 'human rights' discourse ultimately provides an alternative to the contemporary ideology of the market or whether it is, in a very different way, more of the same. Arguably, thinking of justice in terms of rights is already reductive of the problem of political community. It should not be forgotten that the modern tradition of natural rights forms an important formative element of the contemporary discourse of human rights. This modern tradition arose out of Hobbes' critique of the Aristotelian insistence on the centrality of a common conception of justice in the generation of the polis. On the basis of a reductive 'nominalist' conception of language, Hobbes underestimated the power of deliberation and rhetoric in the negotiation of political conflicts. The modern tradition of rights is a utopian vision where: '*La definition des droits de chacun n'aurait pas besoin de se référer à un principe de justice qui les transcende, mais pourrait procéder seulement du jeu de leurs différences et de leurs oppositions.*'<sup>16</sup> Although Alain Supiot makes a persuasive case for re-thinking our modern human rights regimes, a move beyond our present stalemate arguably consists in re-thinking our understanding of language and its relationship to law. Instead of acting as the vehicle for the introduction of a representational 'measure', to use Supiot's terminology, the language of law arguably needs to gain more proximity to the vernacular language of ordinary speech and poetry. An essentially rhetorical and artistic language, an 'in-between' which is not subject to control or straightforward negotiation but which is also not an arena of Schmittian decisionism, is arguably the ultimate (albeit shifting) ground of viable structures of mutual recognition. Language as the ground of the political thus also creates the possibility of an international order built not so much an abstract universal principles but on the basis of a dialogue between cultures.

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<sup>16</sup> A. Supiot, *op. cit.*, p. 47.

## STRESZCZENIE

Nathan Gibbs

**ZNACZENIE PRAW SOCJALNYCH DLA MIĘDZYNARODOWEGO PORZĄDKU PRAWNEGO. REFLEKSJE NA TEMAT KSIĄŻKI ALAINA SUPIOT *L'ESPRIT DE PHILADELPHIE***

Niniejszy artykuł stanowi krytyczną analizę ostatniego dzieła francuskiego filozofa prawa i znawcy prawa pracy, Alaina Supiot, zatytułowanego *Duch Filadelfii (L'esprit de Philadelphie)*. Praca ta daje dobry przegląd niektórych spośród najważniejszych zainteresowań Supiota. Artykuł koncentruje się na filozoficznych aspektach książki, jako że odnoszą się one do współczesnego rozumienia zasady porządnosci (*rule of law*) i „praw człowieka”.

Analiza argumentacji Supiota sugeruje daleko idące paralele między rozumieniem przez Supiota zasady praworządności a Hegłowską koncepcją „etycznej wspólnoty” (*Sittlichkeit*). Tym, co w tej argumentacji jest najbardziej godne uwagi, jest to, że Supiot wydaje się dystansować od poglądu, że Hegłowska wspólnota etyczna jest koniecznie globalna, a nie narodowa, jak też od idei, że wspólnota etyczna jest, z konieczności, *jedynie* przedmiotem organizacji narodowej. Podkreślając znaczenie Międzynarodowej Organizacji Pracy i praw socjalnych na poziomie międzynarodowym, Supiot przedstawia stanowisko, wedle którego w świetle gospodarki światowej etyczna wspólnota, nawet na poziomie narodowym, może być podtrzymana jedynie dzięki intensywnym formom zinstytucjonalizowanej współpracy międzynarodowej.

Autor artykułu dowodzi, że chociaż przedstawiona przez Supiota, inspirowana Heglem, koncepcja „zasady praworządności” (*rule of law*) dostarcza użytecznej krytyki współczesnych ideologii neoliberalnych i stanowi ważne przypomnienie kluczowego znaczenia praw socjalnych dla jakiegokolwiek zdolnego do utrzymania się rozumienia „praworządności”, to jednak pozostawia ona bez odpowiedzi wiele ważnych pytań, dotyczących tego, czy Supiota koncepcja rządów prawa oferuje prawdziwą alternatywę dla myślenia kalkulatywnego (*calculative thinking*), powodującego destrukcję realności osoby ludzkiej, co tworzy podstawę jego krytyki neoliberalizmu. Prowokacyjnym argumentem Supiota jest to, że wbrew intencjom takich neoliberalistów, jak Hayek, neoliberalizm jest kolejną manifestacją typu scenzystycznej ideologicznej struktury, która podbudowywała różne formy XX-wiecznego totalitaryzmu. Charakterystyką tych ideologii jest dokonywanie redukcji osoby ludzkiej do statusu rzeczy, której atrybuty są determinowane przez „naukę” – niezależnie czy ekonomiczną, biologiczną czy materialistyczno-historyczną. Głębia krytyki Supiota wydaje się wywoływać jednak bardziej złożony szereg pytań, które także poddają w wątpliwość Supiota Hegłowską rewizję znaczenia zasady prawo-

rzędności. W szczególności problemem jest to, czy takie scjentyistyczne sposoby myślenia o prawie są nie tyle ideologicznym narzędziem elit posiadających władzę, ile raczej symptomami głębszego kryzysu zachodniej myśli, który Heidegger charakteryzował w kategoriach nastania ery technologii. Z tego punktu widzenia artykuł stawia pytania odnoszące się do tego, czy egzystencjalna realność osoby ludzkiej jest czymś tak radykalnym, że podminowuje ważność *każdej* nowoczesnej koncepcji praw człowieka. Artykuł kończy się wezwaniem do używania formy myślenia prawnego bliższego retoryce niż dominującemu „dogmatycznemu” lub „reprezentacyjnemu” rozumieniu porządku prawnego, według której to formy stabilne wspólnoty polityczne są oparte na własnym, lokalnym złożonym obywatelskim języku. Tak dalece, jak międzynarodowa współpraca jest możliwa, jest ona być może oparta nie tyle na abstrakcyjnych uniwersaliach, jak prawa człowieka, ile na konkretnych możliwościach dialogu między różnymi lokalnymi wspólnotami.

**SŁOWA KLUCZOWE:** Alain Supiot, prawa człowieka, prawa socjalne, praworządność, heglizm, jednostka, neliberalizm