

Summary

“Eine deskriptive Rechtsethik“

by Stephan Kirste

My paper tries to elaborate the thesis that after and insofar the consented core achievements of the natural law tradition have been transformed into positive law, the task of the ethics of law has been reversed. It does not measure positive law against higher ranking extra-positive norms and brings its morality to the tribunal of an external reason. It analyzes the moral norms transformed into positive law instead, reconstructs its basic principles and points on its inconsistencies and deficits. By the forms of the discourses for the establishment and application of norms, law has more elaborated means of founding norms at hand than philosophical deliberation, since these discourses also provide collective legitimacy. Under the influence of modern constitutions, the content of law has included many demands of the centuries old natural law debate. Only if positive law does not meet these standards, or if it, as a totalitarian, dictatorial or paternalist legal order, revokes the differentiation of a reflexive system of norms in form and content, then the ethics of law too becomes a discipline that criticizes positive law from the outside. To position an ethics of law conceptualized in this way in the architecture of the philosophy of law, is one task of this paper. This architecture consists namely first in the theory of jurisprudence as the science of how lawyers and legal scholars think and the status of jurisprudence in the interdisciplinary context. The second discipline of the philosophy of law is the analysis of the form of law by legal theory. The third and final discipline is the ethics of law as the investigation of the just content of law. Its basic concept is justice and the common good, based on justice. From the philosophical tradition, the meaning of justice has been a balanced relation between freedom and equality, whereby the criterion for the balancing of the two principles is human dignity.