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Existential Dimensions in the Socio-Legal Sphere: Introduction

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Abstract

This introduction addresses the relevance of existentialist philosophy for understanding the indeterminacies and instabilities of late-modern society. Whilst existentialist thought is often misunderstood and subsequently unexplored, all the contributors to this special edition accept the basic premise that human existence is inescapably contingent and indeterminate. This introduction provides a short overview of the articles and reflects on themes such as destabilization and reintegration. All the articles are based on contributions to the workshop 'Law, Jurisprudence, Governance and Existential Indeterminacy', held at the International Institute for the Sociology of Law, Onati, Spain, 23-24 May 2013.

Key words

Existentialism; jurisprudence; governance; criminal justice; indeterminacy

Resumen

Esta introducción aborda la relevancia de la filosofía existencialista para comprender las indeterminaciones e inestabilidades de la sociedad tardía. Aunque a menudo el pensamiento existencialista se ha malentendido y por consiguiente, no se ha explorado, todos los participantes de este número especial aceptan la premisa básica de que la existencia humana es ineludiblemente contingente e indeterminada. Esta introducción ofrece un breve resumen de los artículos y reflexiona sobre temas como la desestabilización y reintegración. Todos los artículos se basan en las presentaciones del workshop 'Law, Jurisprudence, Governance and Existential Indeterminacy', celebrado en el Instituto Internacional de Sociología Jurídica, Onati, España, los días 23-24 de mayo de 2013.

Palabras clave

Existencialismo; jurisprudencia; gobernanza; justicia penal; indeterminación

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The indeterminacy that characterizes our age has inspired many legal and socio-legal scholars and researchers to explore new avenues in trying to get to grips with the often bewildering instabilities of, and in, the legal sphere. Many sought and found inspiration in complexity theory, while others did so in post-structuralism, and in what has since become known as *Deleuzoguattarism*. The emphasis thereby shifted gradually towards jurisprudence (rather than law as such) and to governance more broadly. One body of literature, however, has been left unexplored, i.e. existentialism. This lack of interest in existentialist thought is, in our view, unwarranted. Indeed, we argue that existentialism and related thought provides ample and indeed more fitting conceptual tools with which to capture, at least to some extent, the aforementioned indeterminacies and instabilities. Human indeterminacy and human instability is existential indeterminacy and instability. Legal indeterminacy and contingency in jurisprudence are, first and foremost, *existential*. Contributors to this issue set out to focus (either supportively or critically) on the above thesis –i.e. crime, law, and governance as *existentially* indeterminate. The workshop held at the Onati Institute on 23d and 24th May 2013 on the theme of this issue yielded a number of connections which we take the liberty of outlining here.

All contributions subscribe to a common basic premise, i.e. that human existence is at the very core inescapably contingent, indeterminate even. This existential indeterminacy is also the source of deep anxiety. This anxiety is hard to keep under wraps or in control. As Anthony Amatrudo argues in his contribution, it wells up in the effervescence of states of anomie, and it goes hand it hand with the sense of *Unheimlichkeit* which is the hallmark of human existence. The human condition is the condition where those who partake in it are never quite able to be at home. It is also the condition where an infinite number of potential 'ways to be', of potential 'othernesses', are always threatening to unsettle our existential projects. At the heart of human existence, there is a void of sheer indeterminacy, of nothingness as Sartre would have it. A void it may be, it is also full of potential and filled with an infinite ocean of possible demands, claims, and opportunities for the assemblage and re-assemblage of selves. History, Maria Archimandritou demonstrates, is the theatre where conditions for self-constitution are transformed incessantly.

The void at the heart of the human condition is also the starting point of Ernest Becker's existential anthropology. Becker's work focuses of mortality awareness and the fear of death, and traces and analyses the often disastrous consequences of human attempts to gain some control over the deep and seemingly ineradicable anxiety that flows from this well at the heart of the human condition. The contributions of both Hardie-Bick and Lippens address Becker's work and examine how human beings are driven to engage in the construction of meaning systems and in all kinds of 'symbolic immortality' projects. These provide a sense of stability, but they tend to come at a cost: that which provides stability and meaning, or, in other words, that which stems the flow of existential anxiety, only does so temporarily, and takes shape and place, more often than not, in projects of destruction whereby 'threats' and 'enemies' have to be eliminated, time and time again.

However, it doesn't have to be that way. David Polizzi and Matthew Draper's contribution points towards the productive (used here in the sense of: 'creative', 'transformative') potential that resides in moments of indeterminacy. In such moments the complexities of life (e.g. the therapist's or the inmate's) make themselves felt. During such moments the potential for re-shuffling accepted meanings, definitions, or (with a wink to Becker's work) meaning systems, or symbolic immortality projects, becomes might, just might, become alive. Transformation becomes possible. This comes as no surprise to existentialists who tend to maintain that it is precisely through indeterminacy that newness comes about. There is a lot of creative potential in indeterminacy. The point, to follow Polizzi and Draper, is to pierce through the crust or surface of fixed patterns of

behaviour and to thus access reservoirs of potential that lurk behind or underneath them. They introduce the notion of 'transformational alchemy' in order to shed light on the process of existential re-invention. The phrase is aptly chosen: unlike chemistry, alchemy is all about tentatively exploring possibilities within the context (the cauldron, as it were) of limited horizons. And that takes some 'endurance'. Husserl's phenomenology forms the backdrop of their contribution. Authors such as Ernest Becker would not necessarily disagree with Polizzi's and Draper's claim to the possibility of transformational alchemy. Indeed, Becker himself always argued that one can only change if one is prepared to go through the experience of indeterminacy and to 'endure' it (e.g. by looking one's anxieties and one's fear of death squarely in the eye). In all this one comes to realise that the problem is not so much existential indeterminacy, but, rather, the stubborn attempts to block off the potential in it. The problem resides in the often desperate attempts to fix meaning in order to gain a semblance of control.

One of the foremost philosophers of existential indeterminacy was, of course, Jean-Paul Sartre. Often misunderstood, his work remains tremendously important for any project that wishes to apply existential thought and philosophy to issues of crime, law and governance. Sorin Baiasu analyses Sartre's ideas about existential freedom and indeterminacy in the context of debates about 'just deserts' in law and jurisprudence. Both legal and ethical systems ultimately desire that which is fixed, or at least predictable. And that is a problem, since 'justice' –if a thing like 'justice' there be- is to be found not in certainty, but, rather, in the potential that has yet to be actualised. Justice lurks in indeterminacy, indeed in the *agony* of decision, rather than in the decision itself. Philosophers such as Sartre however have pointed to the illusionary nature of anything in human existence that is presented as fixed or stable or predictable. Critically reading Sartre's work, Baiasu locates the exact location in human existence where indeterminacy has its highest transformative potential in the subject, i.e. somewhere between on the one hand the causal contexts and the motives that emerge in them, and, on the other, the moment when projects are devised and imagined, and then committed to.

The push towards the commitment to stability of meaning in human existence, however, remains formidable. This applies to criminal careers and decisions to desist from crime. In a way Stephen Farrall and Ben Hunter's research bears this out. Desistance from crime seems to be a gradual process of change from one routine to another, e.g. from the routine of boredom and hanging around at particular places, to a new routine of family-work-kids. But the transformation –if transformation there be- tends to emerge from moments or indeed 'events' of indeterminacy. The sudden experience of being victimized oneself can cause values, meanings and imagined selves to become thoroughly shaken and re-shuffled. But more often than not the process is a painfully long and protracted one whereby a tiny 'seed', planted by someone, somewhere, at some point in time, grows to de-stabilizing proportions, prompting the need for a new 'life project' and new 'commitments' (to use Sartrean phraseology). There is an obvious connection here with the unpredictability in processes of what Polizzi and Draper have called therapeutic *transformational alchemy*. But there's also a Sartrean connection in Simon Green's paper. Simon argues for a new conception of power. Power has a creative dimension which has hitherto been under-theorised in socio-legal and criminological work. Green applies Sartre's thought to a number of criminal justice issues and practices (i.e. restorative justice; the rehabilitation of offenders; transgression and 'edgework'). He argues for the re-imagination of forms of power that are geared towards unleashing creative capacity, rather than suppressing it.

A recurring theme during the workshop discussions and of course in this proposed collection just as well, is the theme of the constant alternation of moments of *Unheimlichkeit* and 'Heimlichkeit' (as Amatrudo writes it, referring to Heidegger), of excessive freedom and structured order, of destabilization and stabilization, of disintegration and reintegration, and so on, that seem to be the eternally tragic (to

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evoke Nietzsche) hallmark of human existence. Excessive freedom can of course lead to a deep sense of 'Unheimlichkeit', of not-being-at-home. And potentially this can have very destructive consequences, as Amatrudo argues in his contribution. It unleashes a desire for structure, for order, and for stability. However, the 'order' and 'stability' thus achieved, they too can and often do have seriously destructive consequences. One need only re-read work by authors such as Erich Fromm (e.g. his Fear of Freedom) to be reminded of that. A variant of Fromm's insight is to be found in the work of Ernest Becker, as Hardie-Bick demonstrates in his contribution. It is only a matter of time for structured order to become experienced as oppressive, or perhaps only as … boring. This will in turn unleash a desire for freedom. In late modernity (and in particular under neo-liberal conditions, as Simon Green argues) this desire for freedom has reached excessive levels. But here again: this excess often has destructive consequences.

This is a tragic cycle of excessive (and often destructive) freedom on the one hand, and structured (but equally destructive) order on the other. The point perhaps is not so much to ask if the human condition is such that it would allow us to stop this unrelenting cycle. It could very well be the case that this eternally returning cycle (to evoke Nietzsche once more) could never be stopped. As existentialism has argued, the openness at the heart of the human condition may well be here to stay, "curled up like a worm" at the heart of human existence, as Sartre once put it. Take away this openness and you take away the human condition. The point however may well be to imagine ways to make use of the energetic potential in each of the cyclical turns with as little destructiveness as possible.

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