In this challenging but rewarding book, J. Lenoble, Professor of Law in the Centre for Legal Philosphy at the Université Catholique de Louvain, and M. Maesschalck, Professor at the Institut Superieur de Philosophie of the Université Catholique de Louvain and Faculteés universitaires Saint-Louis, seek to illustrate why a sound theoretical approach to the concept of law results in exposing the theory of law to the debate on governance in the social sciences. It reconstructs the underpinnings of recent debate on governance, focussing on the revival of pragmatism in an effort to overcome the inadequacies of both the economic and the deliberative approaches. In tackling the second goal, it examines the advances of pragmatism, as well as its limitations, and concludes by proposing a theoretical approach for dealing with these limitations.

The context of the book is the contemporary crisis in democratic political systems – the failure in collective regulatory methods for the market economy, leading to a generalised crisis of confidence in politics. The authors argue that a sound theoretical approach to the concept of law results in this becoming part of the debate on governance in social science, and thus addresses the crisis in democratic political systems.

They argue that current approaches to democracy have remained dependent on a concept of collective action. This is deficient in the way it addresses the construction of the legitimacy of public authority, and the mobilisation of the actors concerned by the application of norms. They reject the persistent representative belief found in applied theories of democracy. The positivist definition of the concept of law they dismiss as problematic and theoretically incomplete, because it does not allow for an account of the set of conditions for possibility required as the foundation for the operation by which members of a social group adopt obligatory rules. In their view, the normativity of a norm depends on its recognition and practical acceptance, by its citizen addressees.

Lenoble and Maesschalck argue that there is a shared perception of the weaknesses of forms of governance that are linked to a conception of law centred on a self-sufficient referral of the production of norms solely to the practices of the public authorities.

Seven years earlier, in *Toward a theory of governance: the action of norms* (Kluwer Law International, 2003) the same authors argued that for more than a century Western democracies have struggled to keep faith with both economic efficiency and social justice. 'Legitimacy' and 'efficiency' are key elements in this. In that earlier book Lenoble and Maesschalck argued that, by clarifying limitations in rules and beliefs, we are able to develop mechanisms to correct the limiting effects of such judgments and act accordingly. *Democracy, Law and Governance* goes further, and attempts to identify those mechanisms. In particular, it highlights the difficulties with the positivist legal approach to governance.

Lenoble and Maesschalck are not alone in identifying difficulties with economic and deliberative approaches to governance. As Foucault might have argued, the pre-existing constitutional structure imposes controls upon the social and political discourse – and the social and political environment itself affects the constitutional discourse.

Governmentality, which has its origins in the later writings of Michel Foucault and subsequent criticism of his work, has been offered as an important way of understanding how power is arranged in society and how government can be conceptualised. Government, for Foucault, was not so much the political or administrative structures of the modern state as 'the way in which the conduct of individuals or of groups might be directed: the government

of children, of souls, of communities, of families, of the sick … To govern, in this sense, is to structure the possible field of action of others'. In Foucault's later work he stressed the importance of the active subject as the entity through which and by means of which power is actually exercised. Emphasis is placed on the way in which certain attitudes and behaviours came to be. In his *Power/Knowledge: Selected Interviews*, Foucault observed that 'Political theory has never ceased to be obsessed with the person of the sovereign', in effect, the legitimation of power.

Governmentality is used to describe centralisation and increased government power. This power is not negative. In fact, it produces reality through 'rituals of truth' and it creates a particular style of subjectivity with which one conforms to or resists. Because the individuals are taken into this subjectivity they become part of the normalizing force. According to Foucault, power as a social structure resides in the discourse itself. The rules of the discourse prescribe which arguments can legitimately be used by the participants. Governmentality also includes a growing body of knowledge that presents itself as 'scientific,' and which contributes to the power of governmentality. The notion of governmentality emhpasises the creation and deployment of a whole range of technologies connecting multiple centres of power within an exercise of government. It avoids, though does not ignore, particular ideas of power associated with territory, sovereignty and law (arguably the greatest single weakness of the traditional – pre-behaviouralist – approach to constitutional law, sovereignty and politics).

Lenoble and Maesschalck, in *Democracy, Law and Governance*, go a stage further, and reminds us of the approach of Max Weber, who identified three bases for legitimacy – traditions and customs; legal-rational procedures (such as voting); and individual charisma.

The book is well written and scholarly, if at times technical to the point of obscurity. But this is a relatively minor criticism of a major new step on the road to recapturing governance discourse from the shackles of the economic and the deliberative approaches.


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