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Homo Juridicus: On the Anthropological Function of the Law

Alain Supiot

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private regulation interacts with or supplements traditional public regulation.

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Homo Juridicus: On the Anthropological Function of the Law. By Alain Supiot. London and Brooklyn: Verso, 2007. 256 pp. ISBN 978-1-84467-105-2, $34.95 (cloth).

Alain Supiot, eminent French Professor of Law at the University of Nantes and one of the most famous French experts on labor law, in this book gives us his critical take on the place of law in modern society. His broad theme is how the values relevant to labor law have weakened, not only in France but in the world at large. In tracing the reasons for that development, he particularly emphasizes the effects of globalization.

Supiot is among a group of scholars returning to more traditional liberalism in recent French political writing, such as Pierre Manent in *An Intellectual History of Liberalism* (1996). As a reaction to the postmodernists' cynical humanism (often of a rather Nietzchian flavor), which was itself a reaction to the existentialists' world-weary, even in some ways nihilistic brand of humanism of the 1950s, this literature is both post-existentialist and post-Marxist. Even this movement is starting to be challenged, as the French avant-garde does not sit still and now includes supporters of something closer to 18th-century liberalism, which is, curiously enough, much like present-day American liberalism, in goals if not in means. To the extent that Alain Supiot's philosophy can be made out in this continuing ferment, it is something of a compromise. It leans toward a brand of liberalism that seeks to retain the best of French leftist politics and the traditions of European social democracy.

In *Homo Juridicus,* Supiot makes accessible a modernized liberal position on the relation between law and justice. The loss of a commonly accepted source of moral authority has produced a void, and this book is partly a meditation on what are the moral underpinnings of law. In general, this book is a good introduction to the state of present French—but not only French—scholarship on the sociology of law. It is what might be called post-postmodern legal scholarship with an emphasis on labor law.

Supiot writes a good deal about globalization. It is largely thanks to the operations of organizations such as the World Trade Organization, the World Bank, and the International Monetary Fund, he argues, that freedom of contract overrides respect for national legislation; and meanwhile the International Labor Organization, UNESCO, and the World Health Organization are setting less and less ambitious targets, like early 19th-century philanthropists who contented themselves with trying to stop the spread of epidemics, prevent forced labor, and limit child labor. Supiot writes, "Laws are emptied of substantive rules and replaced by rules on negotiation. This trend—proceduralization—transfers the concrete and qualitative questions that were previously settled by the State into the sphere of contract" (p. 103). In Supiot's view, this results in a return to feudal ways of thinking and acting, including practices aimed at enforcing inequalities in social power and producing social hierarchies.

Part 1 of this book, on legal dogma, is concerned with the decline in law's moral basis. The author describes how substantive standards of morality that derived, *ab initio,* from religion and were previously embodied in law and subject to state oversight have given way to instrumental standards of the sort that are established by contractual agreement. Whatever the political opposition to these trends, economic and now technological changes work in tandem to make state "moral" oversight complicated and difficult to enforce.

In Part 2, on legal technique, Supiot argues that new information technologies, by destabilizing the labor market, interfere with law's historic role in humanizing technology. Many of the consequences are in plain sight; he writes, "The boundaries between salaried and freelance work, and private and professional life, have become blurred; new forms of subordination have emerged, while economic power is diffused across a labyrinth of company networks; and any reduction in working hours goes together with an increase in work intensity" (p. 124). One conspicuous and important development that has served to circumscribe the work-lives of employees, and even of suppliers who are not physically present at the workplace, is the monitoring made possible by modern communications technology. Few practices could better illustrate the trend toward the "automation" of law. As Supiot writes, "Since the dawn of the modern age the West has aspired to replace the government of people with the administration of things" (p. 149) by reducing law to pure technique without reference to meaning and values.

The decline of state sovereignty in this world of increased market competition can lead to

increased subservience precisely because of the resulting absence of determinative directing purpose from anybody in authority. The book's last section is a discussion of these trends in globalization. Supiot writes, "Neo-liberalism and neo-corporatism have combined to transform the State into a mere instrument in the hands of forces superior to it—the financial markets at the international level and socio-professional interests internally" (p. 155). He goes on to discuss the growth of "management-by-objectives" in all sectors of private industry and government. This regime produces a kind of pseudo-legitimacy, inasmuch as people are now judged by the results of their actions, as mutually agreed upon. The result, however, often is merely an unending push for more effort, from the bottom to the top of the hierarchy: workers must work ever harder (speed-ups in factories are a classic example), and managers must strive to realize more and more profits for stockholders.

Supiot elaborates on the confusions as to the ultimate sources of legal authority for setting standards, particularly labor standards. In some European states, such as France, parliament can extend a particular labor-management agreement to a broader group. In addition, a great many regulatory agencies have gained power, partly because of the privatization of previously state-provided services and partly because of the liberalization of the movement of capital. These "advisory bodies" are particularly prone to the effects of lobbying and capture by special interests, yet they are expected to give non-partisan advice to governments—and governments accept and act on such advice, deferring to it as the "will of the people," when doing so allows them to escape noisome responsibilities. At the same time, there has been an increasing tendency for states, and for the European Union, to require collective bargaining to cover certain specific matters, such as professional training, gender equality, and pensions. Whatever good these mandates do, they represent intrusion into the collective bargaining process.

The picture of European labor law that emerges is one of buzzing confusion and disorder. The state imposes rules on collective bargaining; variegated groups of "advisory bodies" stand in for the will of the people; and most of the people, meanwhile, are increasingly ruled by administrative authorities, and are in turn asked for their advice by those authorities, all in a rather haphazard manner.

Ultimately it seems to me that Supiot wants the state, and the supranational bodies that increasingly substitute for the state, to be capable of negotiating with multinational corporations based on realistic standards of morality rather than just on practical, instrumental, and (often) adversarial terms. He would like to see the states and supranational bodies concentrate on doing a better job of oversight to ensure justice, using means that go well beyond naïve indexes such as those in the "structural adjustment plans" that are regularly foisted on Third World Countries by the institutions that loan them money.

One reason I call Alain Supiot a liberal is that he avoids extremes, and is sensitive to the cultural contexts in which values are shaped. Thus, although he does believe in human rights, he rejects utopian designs:

> Many intellectuals, echoed by politicians of all colours, are today abandoning social issues in order to specialize in these "last taboos," calling for a society in which differences between the sexes would be abolished, maternity "de-instituted," filiation replaced by contract, children freed from their "special status"—likened to an oppressed minority—and where insanity would be recognized as a human being's inalienable right. (p. 194)

He does not believe this makes sense either. In short, Supiot, besides being a thoughtful scholar, is a common-sense liberal. Those qualities are much in evidence in *Homo Juridicus*. For American labor scholars and labor lawyers who wish to learn from the experiences of their European counterparts, this book is a source of valuable knowledge and insight.

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Labor Economics

The Working Life: The Labor Market for Workers in Low-Skilled Jobs. By Nan L. Maxwell. Kalamazoo, Mich.: W.E. Upjohn Institute for Employment Research, 2006. 206 pp. ISBN 13-978-0-88099-298-5, $40.00 (cloth); 13-978-0-88099-297-8, $18.00 (paper).

The economics literature on low-wage labor markets typically emphasizes the attributes of employers rather than the skills of workers as determinants of workers' compensation and promotion opportunities within firms. Is the firm large? Is it unionized? Is it a major supplier in a highly concentrated output market? Large size, unionization, and concentrated output markets are generally to the advantage of workers. The primary/secondary distinction captures this no-