Nietzsche on *Rule of Law* and Democracy

Dr Luca Epis

2015

This book present studies and ideas that were done and written (the first

time) in 2005/2006. Few changes and additions have been done.

Nietzsche on the Rule of Law

INDEX

ABSTRACT

Although this *study* presents and elaborates the philosophy of Nietzsche about *Rule of Law* and *Democracy*, it is an analysis of the *Simmonds' Legal Theory*. Simmonds was *Reader of Jurisprudence* at the University of Cambridge in 2005/2006. Right at that time, he developed and published an article, *Law as a Moral Archetype*, where he presented (for the first time) "his" Legal Theory. This *study* reports one the first criticisms, which were done, about "his" *Legal Theory* as it was *published* and *lectured* at that time.

It is argued that *Simmonds' Legal Theory* is not original at all. Simmonds took previous ideas of other philosophers (such as: Plato; Saint Augustine; Ockham; and the Italian Ardigò) to elaborate a "different theory" from *Finnis' Legal Theory*, which (on the contrary) took a lot from Saint Aquinas. But, Simmonds did not archive a good result, as he "corrupted" the former philosophical ideas to *something* that (at the end): sounded "weird" and "discriminatory"; leaded to totalitarian and intolerant views.

Furthermore, this study presents the *Epis' Legal Theory* (as it was formulated that time): *Law as a Social Prototype*.

INTRODUCTION

Truth, Nihilism and the "empiricism" of Nietzsche

According to Vattimo G. (1974; 1986; 1988; 1992), Nietzsche prepared the *groundwork* for the *Post-Modernism*. This is supported by the strong relationship between the *Nietzsche's Nihilism* and the *Post-Modernism's view*. Indeed, Nietzsche was "the prime theorist of nihilism in *modernity …* (and) *… also* one of the prime precursors of *postmodern* theory in the philosophical tradition. This means, then, that Nietzsche's thought contains large elements of what—in retrospect—may be called "postmodern". It also suggests that to a certain extent his theory of modernity may in fact be prophetic of postmodernity" (Woodward A. 2002).

Even if I disagree with Vattimo G. (1986; 1988; 1992) and Woodward A. (2002), this study starts analysing *Nietzsche's Nihilism*.

Nietzsche's Nihilism is the *logical answer* at any attempt (made by Humanity) to investigate the *foundation* of *Truth*, *Values* and *Life's meaning*, inside *metaphysical realms* inhabited by *Gods* and *Idols*, instead of the *physical and empirical one*. Nietzsche explained this, using the *paradigm* of *Christian Morality*.

But, *Nietzsche's philosophy* is **not** a *Discourse pro* or *contra* **either** *metaphysics* **or** *physics* in themselves. *Nietzsche's philosophy* does not want analysing the different *theories of knowledge* for supporting one of them, instead of another one. Simply, Nietzsche wanted to put the *individual* at the centre of his philosophy. He wanted to suggest a change of prospective. According to Nietzsche, the *singular individuals* are the *source* of their own *Truth*, their own *Values* and their own *Life-meaning*.

Indeed, all the time *human beings* attempt to look for an *answer* outside them(selves), they fall into *nihilism*. There is NOT any *empirical reality* outside the *individual experience*. The *empiricism* of Nietzsche is not *Materialism* and/or *Reductionism* (against any *metaphysical reality* in itself). It is not also *scientism*. But, the *empiricism* of Nietzsche is an *individual empiricism* for the reasons that are clarified *infra* (below).

The only EMPIRICAL REALITY is the INDIVIDUAL EXPERIENCE

After *Nihilism* proved that: **no** *absolute Truth* exists; all the different *points of view* have the same *epistemic value* and *dignity*; **no** *Certainty* is real; etc …; … *individuals* found themselves in front of a choice. **On one hand**, they could *choose* to believe in, and to live for, their own *Truth* (that comes

from their own *living experiences*). **On the other hand**, they can choose to "believe" in, and to serve, the *point of view* of someone else.

Knowledge and Power

Nietzsche would have agreed with Foucault that *Power* and *Knowledge* are the *two faces* of the same *coin*. The *society*, indeed, is nothing more than a *relationship of power* among people. People are divided in two main groups: *Masters* and *Slaves*. The *form* (which those *two groups* and *their bond* take) changes: from *Time* to *Time*; from *Culture* to *Culture;* from *Legal System* to *Legal System*. But, at the end, the *substance* is always the same. *Few persons* lead; the *majority* follows.

Knowledge, Ethics and *Education*, are functional *means* for this kind of *hierarchical structure*. As *Power* cannot employ *brutal physical force* to make people serve its own *interests* in the modern societies, the *role* of *creeds*, *beliefs* and *propaganda*, is dramatically increased.

Indeed, *beliefs* have become the *new form* of "slavery's chains". They are used by *Power* to make people serve its own interests. But, *beliefs* have nothing to do with *Truth*. Simply, *to believe* is to **have faith in** *something* like a *dogma*. Persons do not have any *knowledge* about their *beliefs*, but they **are certain of** *something* as *someone else* told it!!!! In other words,

people **accept as true**, **rely on**, *anything* that is stated and supported by *Authority*, *Social Pressure* and *Groupthink*. These *forces* make people live and believe in a *Hyper-Reality* (which they build for their own aims), but *Hyper-Reality* is NOT *Reality*. *Hyper-Realty* is a Realm of *illusions* and *lies*. People have *faith in* those *beliefs* (and *act in compliance of* them) as a *sheep* follows the *flock*!!!!. But *faith*, … it does not matter in / for *What* (*Religion*; *Science*; *State*; etc…) is always been one of the *worst mean* to archive *Knowledge*. This is Nietzsche's message.

Nowadays, the *framework* of Weick's studies about **sensemaking** and en**act**ment could be operatively used to explain as *Power* uses and misuses *beliefs* to pursue its own *aims*. They should not be limited for approaching only the *working contexts* inside the Companies. Actually, they are very useful for analyzing the *general social dynamics*.

From Knowledge to Nihilism

As *knowledge* has served and has been serving *Power* and *its interests*, **any investigation** on *beliefs' foundations* turns to be *untrue*.

Gods and *Idols* are used to found most *beliefs* as they cannot be founded *anywhere* else. Moreover, God was (in a retrospective way) the first *Global Panopticon*!! As *Power* could not control people 24 hours per day, *Power*

makes people believe that *God* can. So, people complied with *Power's Will*, fearing the *punishment* of *God*. In other words, *God* was employed by *Power* like a *Panopticon's gaoler*!!!! *God*'s job was: to watch everyone 24 hours per day; to punish those people who disobey or infringe Authority's *norms*. But, a *God* reduced to be a *Panopticon's gaoler* is not anymore *God*. Can you believe in an *omnipotent Being*, who created the *entire universe* to make all *His Creation* be a *Panopticon*? Can you believe in a *God* who reduced Himself to be a *Panopticon's Gaoler* and/or a *Prison Director*?!?!?!?

No, it is not believable.

 "I conjure you, my brethren, *remain true to the earth* and believe not those who speak onto you of hopes beyond the compass of the earth! Poisoners are they, whether they know it or not"

Nietzsche, *Thus Spake Zarathustra*, Prologue, III.

Why are Gods and Idols used to found Truth and Values?

Surely has God been a good *mean* of *Social Control*.

Yet, God *has been* and *is* a way to exit from the *Agrippa's trilemma* (also called: *Munchhausen trilemma*).

The *Agrippa's trilemma* is an *Epistemological Argument* that goes back to *Ancient Greek Skepticism*. In the modern time, Hans Albert has re-formulated it. According to Albert, the *Munchhausen trilemma* is able to prove the impossibility to *found* and to *justify* any *truth* and/or *value* with any *existing method* (deductive; inductive; causal; transcendental; logical; etc …). The *trilemma* proves the impossibility to *found* any *truth*. Any attempt, indeed, falls into one of these three cases:

1. ***regressive argument ad infinitum*** or ***progress ad infinitum***. Each *proof* requires a further *proof ad infinitum*. This *argumentum*: **both**, is not practicable; **and**, does not provide any *certain foundation*;

2. ***vicious circle*** and/or ***circular argument*** (known in *scholasticism* as *diallelus*). The *belief* is based on *circularity* (a *logical circle* in the *deduction*). At a certain stage of the *chain of arguments*, a *proof* needs for its own *foundation* a *previous "proof"*, which needs for its own foundation the *subsequent proof*!! In other words, the *latter* is based on the *former*; the *former* on the *latter*. *Exempli gratia*, **A** is based on **B**, **B** is based on **C**, **C** is based on **D**. But, **D** is based on **A**. This is a *circle*. It does not lead to: **both**, any *certain foundation*; **and**, any *final proof*;

3. ***break of searching***. At a certain point, people get tired to look for *proofs* and *evidences* of their *beliefs*. So, they end their researches at some stages. They create an **assumption**. An **assumption** is nothing more than a *hypothesis* that is not proved. Yet, they pretend those *assumptions* to be *self–evident* (*axiomatic argument*)!! But, this is nothing more than *cheating*. According to Albert, even if an *axiomatic argument* can appear "reasonable" to *lay people*, it is nothing more than a *random suspension* of the *principle of sufficient reason*. It does not lead to any *certain proof*. It leads only to: **both**, *Dogmas*; **and**, *ipse dixit*!

So, at the end, *Truth* and *Values* cannot be *found* with any *method*. Thus, God was employed like "*break of searching*". God was able to link together: the *axiomatic argument* with the *Authority argument*.

But, God was not the *source* of the *beliefs* that were founded on Him!

As we told *supra* (above), those *truths* and *values* were "*all too human things*".

"*Where you see ideal thing, I see – human, alas all too human things*"

Friedrich W. Nietzsche, *Human All Too Human*

Nietzsche used the *Catholic religion* like *paradigm. Christian beliefs*, indeed, have changed continually from *Time* to *Time* to serve the *Power's interests*. Those changes were not a *change of mind* of *God*, but they were a change in the *historical interests* of the *pro tempore Power*.

According to Weick's framework, *Power* uses *beliefs* to make people work in compliance with its aims. The *beliefs* have been used and have been in the progress of being used by *Power* like *human software*. *To make* a computer do something, you need *software*. In the same way, to make people do *something*, you need to make them believe *something*.

The *paradigm of God* works also for *idols*.

Science, *Psychology*, *Technology*, *Economics*, *Finance*, *Political Ideologies*, etc…, could be *idols*. They are *idols* each time they demand *faith*. They are *idols* each time people *have faith in* them. They are *idols* each time they ask for *homologation*.

There is no difference in having *faith* in them and/or in God. There is no difference for people to homologate themselves in *God's Will* and/or in *Psychological / economical / political / etc … / constructs*. All of them are *human creations*.

The *social mechanisms* behind *faith* and *homologation* are the same. Both of them, soon or later, lead to *intolerance*, *discrimination*, *fanaticism*, *violence*, and *all the worst actions* that Humanity has done in the History.

As *Dominican monks* were able to commit the *most ferocious atrocities* "in the name of" God, due the same *blind faith* (nowadays) *scientists*, **psychologists**, *statesmen*, **financiers**, …, can commit any kind of atrocity "in the name of" their new *Idols*. Instead of a *Theocratic Tyranny* (with its *Holly Inquisition*), these *idols* will found a *Technocratic Tyranny* (with its *Profane Inquisition*[1]). But, *both of them* are the *same*. *Both of them* demand *homologation*, *faith*, *submission to the Power's will*. *Sciences*, indeed, is just a *Power's matter*. The same *beliefs* and *truths*, which are part of the *Scientific Paradigm*, are *consequences* of the *relationships of power* among the *members* of that *Scientific Community* (Lyotard). *Changes* in the *relationships of power* become *changes* in the *beliefs* and in *what* is

---

[1] *Psychopathology* is: a new *Malleolus Maleficarum* (Epis, 2011/2015); the *form* that has been taken and has been in the progress of being taken by the *Profane Inquisition*. Indeed, it is used to "attack" *whoever* acts and/or believes differently from the *flock*. It is used to commit and to justify any modern atrocity "in the name of": *Homologation*; and, *Only-Allowed-Thought*. Most of the times, it is used to (even) create the *behaviours* and *situations* that are used to justify (later) its use / intervention. It is an instrument able to trick the *Legal System* (with all its *Rights* and *Liberties*).

assumed to be *true* in that *Paradigm, …,* and *vice versa. Power* and *Knowledge* are the same, as we told *supra* (above).

Into Nihilism. The Choice: are You a Master or a Slave?

As *Truth* cannot be reached by *any Science*, *any Religion*, *any Discipline*, and *any Methodology*; …

As *Truth* and *Justice*, at the end, are nothing more than the *interest* of the most Powerful *a là* Trasimacus; …

As *Power* is, in its *very Nature*, the *force* to impose one *point of view* onto any *others*; …

… People find themselves into *Nihilism*.

So, the *question* is: is it possible to survive into *Nihilism*?

According to Nietzsche, it is.

Nihilism states only that it is not possible to found any *Truth* and/or *Value* in the *external World. Each person* should become the *source* of his/her own *Truth* and *Values*. Some people are able; other people are not. The latter prefer to follow the *truth* and *values* of other people instead of theirs own.

In other words, *Nihilism* marks the *boundary* between *Masters* and *Slaves*.

Masters are those people who are able to trust themselves and to determinate their own *Truth* and *Values*.

On the contrary, ***slaves*** need to "trust" and to "serve" the *point of view* of someone else.

So, ***Nihilism*** puts the ***human beings*** in front of a ***choice***.

Nihilism asks: "Are you a *Master* or a *Slave*?"

The *answer* depends from the *individual ability* to *stand alone* into *Nihilism* or not.

A **Master** is able to: stand-alone into *Nihilism*; go against the *flow*; be different from the *flock*; be *creator* of his *own universe*, *truth*, *values*, and *life-meaning*.

A **Slave** is not able. He/she prefers acting like a *sheep* and/or *lemming*. He/she needs: to follow uncritically the *flock*; to ***homologate*** and to ***uniform*** him/herself to the *group* to feel "normal"; to believe that *who* acts differently from the *group* is *crazy*. *Psychopathology* is the *creed* of the **slaves**. *Psychopathology* is a *creation* of the ***slaves'*** *thought*. They demand *norms* and *models*. They need to *homologate* themselves to those *norms*

and *models*. *To be* a *flock* of *sheep*, they need to be uniformed to those *norms* and *models*. Thus, they cannot tolerate *anything* that is different from their *norms* and *models*. *Everything* is different, indeed, must: **either**, be eliminated; **or**, be forced to *conform* to their *norms* and *models*. *Everything* is different from them, it is a *threat* and *menace* to: the *flock*; the *Only-Allowed-Thought*. As they think themselves *normal*, *sane*, *right*, …, everything is different must be *abnormal*, *insane*, *crazy*. As it/he/she is *insane*, they feel themselves to be justified, to force it/he/she to *homologate* to the *flock*. So, *psychopathology* has become the *New Profane Inquisition*. *Psychopathology* has become the *justification* and the *instrument* to make people: uniform to the *flock*; be *uncritical servants* of the *Power* and its *Only-Allowed-Thought*. *Psychopathology* has become a "mean" to create a new form of *slavery*. *To be* "normal" is to comply with, to believe in, the *Only-Allowed-Thought*.

So, which will your answer be, when you find yourself in front of *Nihilism*?

From Nihilism to Individual Empiricism: the implosion of the dichotomy between Nietzsche's Philosophy and Christian Religion!!

Once *human beings* find themselves alone into *Nihilism*, they can only make one of the two above choices.

People, who are overwhelmed by *fear*, will look for a *shelter* into the *point of view* of someone else. They will not be able to live without *absolute certainties*; so, they will ask for *someone*, who is able to give them *dogmas*. They will look for an *Only-Allowed-Thought* at which uniform themselves. On the contrary, *individuals*, who are able to stand alone into *Nihilism*, will find a *new beginning*. Paradoxically, although *Nietzsche's speech* seemed to be against the *Christian God*, they discover themselves "God's sons"!!!!

According to the *Bible*, God made *human beings* look like Him. God was the *Creator*. <u>He was the *first being* able to stand *alone* into *Nihilism*.</u> Hence, *his sons* should be *creators*; *his sons* should be able to stand *alone* into *Nihilism*; … as He did at the *beginning of the Time*.

The *superman* of Nietzsche is this. According to *Thus Spake Zarathustra*, he is able to *transmute* himself into a *Child* (after having been a *camel* and

a *lion*). The *Child* is the *final step* of his evolution. The *Child* is a **creator**. The *Child* is able to stand alone into *Nihilism* without fearing it.

But, whereas God was the *creator* of the *entire Universe*, the *child* is the *creator* of his *own universe*.

God was not a *lemming*. Could *His Sons* be *lemmings*?

God was not a *sheep*. Could *His sons* be uncritically *followers* of the *flock*?!?!

Thus, I disagree:

1. **both**, with Woodward A. (2002), who describes Nietzsche like a *nihilist* who simply attempts to destroy any value to lead to a complete nihilism;

2. **and**, with Vattimo (1998), who thinks that it is not possible to go over *Nihilism* (*exempli gratia*, searching a new *foundation* for *Truth* and *Values*), but it is possible only to change our attitude to it. In other words, Vattimo suggests accepting to live in a *meaningless World*.

Nietzsche does not abandon the idea of *Truth*. He suggests to change *prospective*.

"*The sense of truth*. – I approve of any form of scepticism to which I can replay, "Let's try it!" But I want to hear nothing more about all the things and questions that don't admit of experiment. This is the limit of my "sense of truth"; for there, courage has lost its right" (*Gay Science*, 51).

From Man to Super-Man

The *individuals*, who are able to pass through the *three stages* (*camel*; *lion*; *Child*), arrive to *transmute* themselves from *men* to *super-men*.

This means two things. **On one hand**, people discover themselves *sons of God*. **On the other hand**, *society* cannot long to be a *flock of sheep*.

Society has also to *transmute* itself from a *flock of sheep* to *group* of *free Individuals*, who are able to *co-exist* and to *collaborate* in *their own* (very strong) *differences*.

Only this kind of society will be a *true Democracy*.

Indeed, **no democracy** (at all) can exist among *flocks of sheep* as *homologation* is the worst kind of *Tyranny*.

It does not matter the *form* and/or the *name* that has been taken by *tyranny*.

It does not matter the *reason* "in the name of" which, *Homologation* is demanded.

Without a doubt, *flocks of sheep* are always dominated by a *Totalitarian Regime* as they demand *homologation*. The only difference among these *Regimes* is about: the *degree* of how *tyranny* is *overt* or *covert*; and, the concrete historical / cultural *form* that has been taken by the *Regime itself*.

As we are going to explain in **Part III**, *Democracy* can exist **only, and only if**, there are *free Individuals*, who are **not** homologated among them.

NIETZSCHE ON *RULE OF LAW*

Simmonds' Legal Theory

At the University of Cambridge …,

… that "marvellous University" where the "**Right Very Most"** *finest minds* are (!!!!) …,

… there was a *Reader in Jurisprudence* who thought to have discovered the "hot water" in 2005!!

He was a very *lovely* and *enjoyable* person. Indeed, rarely have I found (in the entirely World) so *pleasant lectures*. Each time I demonstrated the *inconsistency* and *wrongfulness* of one of *his theories* and/or *teachings*, he was used to reply that those *theories/teachings* were thought by one of the *Finest Cambridge Mind*!! For most people, a *sufficient reason* to prove the rightness of those *theories / teachings*!! Of course, *populaces* agreed with him, clapping at those self-evident words.

On the contrary, I was used to laugh a lot. I found so hilarious his *sense of humour* that I laughed so much that I wept for *Happiness*!! *His lectures* were so *entertaining* and *mirthful* that they were a *blessing break* from the usual *pedant*, *doctrinaire* and *hollow*, *vain* Cambridge speech.

Simmonds (2005a; 2005b) claimed to have archived a *Legal Theory* able to support "an understanding of law as a substantive moral idea" *versus* "an understanding of the law as a morally neutral instrument, serviceable for wicked purposes as well as good". But, *his theory* is: **both**, wrong; **and,** NOT original at all. It was copied from Plato and the Italian Ardigò. Actually, the *theories* of Plato and Ardigò were far, … far… , far better than Simmonds' theory. The latter was a *bad copy*, which "corrupted" the *good ideas* of the formers.

Simmonds believed to have overcome the *conflict* **between** *Rule of Law* **and** the "mundane view of law" with his Legal Theory: *Law as a Moral Archetype*. According to Simmonds, *Law* is an "approximation to an intellectual archetype". His theory is based on two *assumptions*:

1. **the first** is the *postulate* that: *Law* is "structured by archetype";
2. **the second** is the *postulate* that: the "archetype is an intrinsically moral idea".

But, both his *postulates / assumptions* are wrong!!

Moreover, although Simmonds attempts to deny that his *archetype* lives in a *metaphysical realm*, he fails to prove this.

At a first look, Simmonds' theory seems to be a mere reformulation of the two *platonic worlds*. The strong affinity **between** Simmonds **and** Plato is supported by the example of *archetype*, he used: the *concept of triangle*.

Simmonds rejected the *empirical definition* (which had been made by Euclid[2]) as he preferred an understanding of *triangle* in term of: *degrees* of approximation **between** a *geometrical form* **and** an *ideal archetype* of *triangle*. Does it sound like Plato (!!), does it not?

Indeed, he wrote: "So triangles do not constitute triangles by satisfying a set of criteria" (!) "but by approximating to an ideal archetype; and not all triangles are equally triangles: they are triangles to the degree to which they approach the ideal" (Simmonds, 2005a)[3].

---

[2] According to Euclid, a *triangle* is a *two dimensional* geometrical form with: **both**, *three angles*, whose sum ($\alpha + \beta + \gamma$) is equal to 180°; **and**, *three sides*, which are composed by a straight line segment, whose the length of one of them is never: **both**, the same; **and**, longer; … the sum of the others two.

[3] Simmonds (2005b) repeated this concept: "Actual instances of triangles constitute triangles in virtue of the degree to which they approximate to the ideal "triangle" of mathematical definition. So the triangles that one comes across do not constitute triangles by fully satisfying a set of criteria, but by approximating to an ideal archetype. **Indeed, not all triangles are equally triangles: they are triangles to the degree to which they approach the ideal**".

There is only one difference **between** Plato **and** Simmonds. **For the former**, there is not *prejudice* and *discrimination* among *triangles*. *Triangles* are equally *triangles*, even if they can have different *forms* and *characteristics. Equilateral triangles*, *isosceles triangles*, *scalene triangles*, *right triangles*, *obtuse triangles*, *acute triangles* are all equally *triangles* for a Platonic idea of *triangle*. **But, for Simmonds**, they are **not** *equal*, since they reflect a different *degree* of approximation to the *ideal archetype* of *triangle*!!

But, are we sure that exist only an *ideal archetype* of *triangle*?!?!

Why is it not possible the existence of six *different ideal archetypes* of *triangle*?!?!

Is it possible that those *six different archetypes* of *triangle* come from a common *meta-archetype* of *triangle*?!?!

And, if so it is …, are we sure that the *function / role / nature* of this *meta-archetype* of *triangle* is to discriminate among *triangles*?!?!

No, we are not. Simmonds was hugely wrong.

Law of Hume versus Simmonds' Moral Archetype

According to the *Law of Hume*, this *meta-archetype* belongs to a *Descriptive Realm*. It does not belong to any *Normative Realm*. So, it cannot be used to discriminate among *triangles*. It can only say if *A* is: **either**, a *triangle*; **or**, not a *triangle*. In other words, it defines the *entities* that belong to the *set* of *triangles*. If we apply it to *Law*, it will be the same. The *Archetype* will only say if *something* belongs, or not, to *Law*.

That is all, Folks.

But Simmonds makes his *archetype* say *something* of very different.

According to Simmonds, not all *triangles* are equally *triangles* but "they are triangles to the degree to which they approach the ideal".

In other words, Simmonds violated the *Law of Hume*. He passed **from** an *entity*, which belongs to the *Descriptive Realm*, **to** an *entity*, which belongs to a *Normative Realm*. He confused between these *two dimensions*.

Simmonds' archetype is not an *archetype*. It is a *normative choice* that has been masked behind a *descriptive form*.

For this reason, he arrived to state that "not all *triangle* are equally *triangles*: they are *triangles* to the degree to which they approach the ideal".

All the *Legal Theory of Simmonds* is based on this huge mistake. He confound between the *Descriptive Realm* and the *Normative Realm*.

An *entity* can only belong to one of *these two Realms*. An *entity* cannot pass **from** one of them **to** another one. So, *Simmonds' Legal Theory* implodes in itself. **On one hand**, it was the *result* of a *very wrong reasoning* (done by one of the "finest Cambridge mind"). Simmonds misused *philosophical ideas* **without**: having *awareness* of them and their implications; knowing what he was doing!! **On the other hand**, if he knew what he was doing, he was willingly *cheating*. He used one of the most antique *logical fallacies*.

As a result (it does not matter *how* or *why*) he created a *wrong* and *dangerous* theory able to "prostituting" itself to support any *intolerant* and *totalitarian Regime*, which wants to impose its *own ideal* onto any other one else!!

Ideals, indeed, change: from *culture* to *culture*; from *time* to *time*; from *person* to *person*; etc… .

The *Holy Inquisition*, on the contrary, would have found very interesting the *Legal Theory* of Simmonds!!

Simmonds Background

Where does *Simmonds' Legal Theory* come from?

The *University of Oxford* and the *University of Cambridge* have a long tradition of rivalry. Thus, when Oxford says *A*, Cambridge says *Z*.

It makes quite easy their job!!

As Finnis (Oxford) had taken a lot from Saint Aquinas (Aristotelism), Simmonds (Cambridge) was forced to take a lot from: Saint Augustine (Platonism); and Ockham, who opposed *his teaching* to those of Aquinas.

So, Finnis and Simmonds played this *historical endless recursive game* **between** these two Universities **and** these two *opposite philosophical points* of view.

But, Simmonds "corrupted" the *ideal of Plato* with *Ockham's philosophy*.

From Saint Augustine, Simmonds took: the strong *dualism*; and, the idea of *Law* as a *Moral Archetype*. The *imperfect human beings* tend endless to, without reaching it, a *Moral Archetype*.

From Plato, Simmonds took: **both,** the *Theory of Form* (*Phaedo*); **and**, the *Doctrine of Love*. **From the former**, *Simmonds* took his *first postulate*[4]. As *nothing* in the World is more than a *shadow* (Plato, *Cavern's Myth*), *Law* comes from an *immaterial ideal* that is **neither** *physical* **nor** *mental*. According to Plato, this *ideal* comes from *nowhere* in the *space-time*, as it lives in a *metaphysical world* (the *world of ideas*). **From the *doctrine of love***, Simmonds took the *dynamical relationship* between *Law* and its *ideal*.

But, **neither** Plato **nor** Augustine stated what Simmonds affirmed later: "not all triangles are equally triangles" as "they are triangles to the degree to which they approach the ideal" (Simmonds, 2005a).

Simmonds took this idea from **Ockham's thought**. Ockham fought Aquinas' teachings. As Simmonds wanted to fight *Finnis' theory*, he: **either**, had to pick up from Ockham; **or**, had to create *something* new.

Simmonds picked up from Ockham (it was far easier).

According to Ockham, *Moral and Legal norms* cannot be found with *reason* (and/or *introspection a là* Finnis and Saint Aquinas). *Behaviours* are

---

[4] The first postulate is: Law is "structured by archetype".

good only if they are conformed to *God's commands*. There is **no** *intrinsic reason* in them. *Good* and *Bad* are only the outcome of *arbitrary norms / commands* of *God*. So, even the *wickedest things* can be the *absolute Good* if God commands them. *Bad* is only to disobey to (to not comply with) *God's norms* and/or *commands*.

Now, Simmonds does not speak about God, as God has never ever commanded anything. Moreover, nowadays, God is an *unfashionable argument* among *Scholars*. On the contrary, the *Moral Archetype* is based on *Power's Will*. As there is not any *intrinsic reason* of *what* Good is (Ockham), *Simmonds' Moral Archetype* becomes an *arbitrary normative entity* used by *Power* to make *triangles* homologate to its will. So, *Simmonds' Moral Archetype* discriminates among *triangles*. This is the reason why not all *triangles* are equally triangles. They are "*triangle*" due the *degree* to which they comply with *Power's will*.

At the end, the *Legal Theory of Simmonds* has opened to *doors* to any *Totalitarian Regime* behind *vacuum*, in *appearance agreeable*, *void words*.

Nietzsche versus Simmonds

"*Where you see ideal thing, I see – human, alas all too human things*"

Friedrich W. Nietzsche, *Human All Too Human*

Both Nietzsche **and** I agree that different *triangles* have different *forms* and *characteristics*[5] as different *Human Beings* have different: *Culture*; *Race*; *Ethnicity*; *Nationality*; *Ideas*; *Beliefs*; etc… . BUT, **neither** Nietzsche **nor** I agree with Simmonds when he says that "not all *triangles* are equally triangles" as "they are triangles to the degree to which they approach the ideal *triangles*".

This is for the *reasons* I have explained *supra* (above) *et infra* (below).

Prototype versus Archetype

When Simmonds speaks about *Moral Archetypes*, he creates:

1. a *surreal hybrid*: **between** *Plato's Epistemology* **and** *Ockham's Ethics*;

2. and, a *monster* (*chimera*) which continuously swing **between** a *Descriptive Realm / Dimension* **and** a *Normative Realm / Dimension*.

Simmonds does not have any clear idea about the difference: **between** *Epistemology* **and** *Ethics*; **between** *Descriptive Realm* **and** *Normative*

---

[5] Some of them are *equilateral triangles*; some of them are *isosceles triangles*; some of them are *scalene triangles*; some of them are *right triangles*; some of them are *obtuse triangles*; some of them are *acute triangles*.

Realm. Simmonds' Legal Theory confounds the *Nature of Law* with the *Political Domain* of a *Legal System*.

On the contrary, when I speak about **Law as a *Social Prototype***, I speak about *empirical things*. I speak about a *Descriptive Theory* that explains the *Nature of Law* without: **both/either**, entering inside the *normative contents*; **and/or**, judging among *triangles*. I keep a distinction: **from** *Epistemology* **to** *Ethics*; **from** the *Descriptive Realm* **to** the *Normative Realm*.

What is a Social Prototype?

A *Social Prototype* is exactly the opposite of the Simmonds' *Moral Archetype*. *To understand* the *prototype*, you have to change the *prospective*. You cannot start from any *metaphysical Realm*, but you have to start from the *empirical* and *physical Realm*.

Simmonds, indeed, made the same mistake of Raz (Epis L., 2015). As he could not found "his" *theory* in the *empirical facts*, he founded it entirely onto *ontology* and *metaphysics*. It was a way to deny the reality of *facts*. But, *Law* does not come from any *metaphysical Realm*!! On the contrary, *Law* comes from the *historical living experience* of a *society*.

As this *writing* is to say, **Law as a Social Prototype** is the *final evolution* of the *Ardigò's Social Ideal*.

According to Ardigò (1901), *every society* creates its own **Social Ideal** (*Idealità Sociale*). The *Social Ideal* does not come from any *metaphysical Realm*. It is the *natural outcome* that is caused by the *inborn* and *innate Law* of the *Nature.* They are "written" inside: **both**, the *Social Organism*; **and**, the *Human Beings*.

The *Social Ideal* is also called *Justice*. It is: the *Specific Force* of the *Social Organism*; the *set* of the *implicit norms* (*Natural Law*) that are naturally created by the *Society* and its *members.* Those *norms* are *innate* and *necessary*. The *Social Organism*, indeed, cannot exist without them.

So, Ardigò created an *empirical theory* that was able to sketch out a *framework* for understanding the two *dimensions* of the *Legal System*: the *implicit dimension* (**Social Ideal**); and, the *explicit dimension* (**Positive Law**). But, Ardigò gave merely a *sketch*, he was not able to find and to indicate those *innate* and *inborn mechanisms*.

Epis' Social Prototype ends "what" Ardigò started. *Epis' Social Prototype* applies the *framework* of the *Social Psychology* and *Social Cognition* to *Ardigò's Social Ideal* .

Indeed, in all its dimensions, *Law* is nothing more and nothing less than a particular kind of *social norm*. So, **Law as a Social Prototype** is a very *empirical* and *positive theory* able to explain:

1. the *Nature of Law*;

2. the *Legal Interpretation*;

3. the *relationship* and *dynamics* between the *implicit* and *explicit Legal Dimensions*;

4. the *innate psychosocial mechanisms* that rule the *Legal System*;

5. the whole *Legal Domain* in its every levels and aspects.

Law as a Social Prototype is also able to explain the relationship among *Morality*, *Justice* and *Law*. All of them are *sub-sets* of the *main set* of the *social norms*.

Whereas several *scholars* have linked the *moral norms* to the *legal norms*, none of them was able to explain their relationship. They refused to proceed with an *interdisciplinary approach*. They refused to apply the *Social Psychology* and *Social Cognition* to their disciplines. So, their *theories* are weak.

Simmonds' Moral Archetype is an example of this, in Jurisprudence. *Wikstrom's Situational Action Theory of Crime Causation* is another

example of this, in *Criminology*. Indeed, Epis has always advised Wikstrom to improve his theory and studies, using the *Social Psychology* and *Social Cognition*, since 2006. For instance, you can give a look to Epis' writing: *Morality and Crime*.

Finally, **Law as Social Prototype** resolves *several legal and philosophical problems* such as: the violation of the *Law of Hume*; the conflict between *Natural Law* and *Positive Law*.

Epis' Prototype and Simmonds'Archetype: the Final Conflict

Simmonds' Moral Archetype and **Epis' Social Prototype** represent the **final opposite views** that are possible to have about the **Nature of Law**.

They *evolve* and *synthesis* all the *previous legal thought*. Simmonds re-elaborated the *antique theological and metaphysical perspectives* into a *modern lay one*. Epis re-elaborated the *empirical and positive legal theories*, which have been developed inside the *Legal Thought*, into an *integrated and interdisciplinary theory*. *Exempli gratia*, Epis *enriched* and *advanced* the *Ardigò's Legal Thought* with the *framework* of the *Social Psychology*, *Cognitive Psychology* and *Social Cognition*. At the end, *Epis' Legal Theory* is able to:

1. understand the *Legal Phenomenum* in its *Whole Unity;*

2. illustrate the different *layers*, *strata* and *levels*, which constitute the *Legal Reality;*

3. describe "how" those *levels* work and interact together.

In other words, Epis' theory is a *model*, which is able to consider all the different *factors* and *variables* of the *function*: **f (Law)**. Of course, the *model* has some limits!! It considers only the *factors* that belong to the *Social* and *Psychological Sciences*. In other words, it cannot tell you "how" the fly of a butterfly in Amazon Forest can affect a *legal proceeding* in Italy. But, actually, … it can … in *somehow*.

According to the *Chaos' Theory*, the *movement* of *atoms*, which has been caused by a Brazilian butterfly, can influence the *outcome* of a *rain* and/or a *storm* in Italy. For instance, at least, it can make some *drops* of *rain* and/or *hail* fall more *somewhere* instead of *somewhere else*. A little difference of few millimetres and/or centimetres can cause an *unpredicted slip* to a *Lawyer,* who is going to notify a *Legal Act*. Well, if the *Lawyer* has waited for the *last legal day* (as most of the time, they do), this little *unpredicted bother* (… which was caused by an innocent Brazilian

butterfly…) is a *sufficient factor*[6] that is able *alone* to affect deeply the entire *legal proceeding*[7].

Exempli gratia, there is no time for notifying the *summons* before the end of the *legal term*. This will cause: the *invalidity* of the *notification* of the summons; and, the loss of the *rights*.

This is "why", I strongly advice *Lawyers* (… and more generally any *reasonable person* …) to **not** wait for the *last moment*. *Fate* is a *capricious Child*, with an extraordinary *sense of humour*. So, you cannot ever know when *He* decides to play a *joke* on you.

According to Nietzsche, the Simmonds' *archetype* is an *idol* as: it comes from *metaphysics*; and, it demands *faith*.

On the contrary, the *Epis' Social Prototype* is not an *idol*. It does not demand *faith*. It is a *descriptive theory* that is able to indicate those clear *psychosocial mechanisms* that rule entirely the *Law's Realm*.

---

[6] Which is not considered by my *model*.

[7] Actually, this *example* is taken by *real cases*. It happened that lawyers, who waited for the last useful day for notifying a *summons*, slipped and broke one of their legs. So, their clients lost all their rights.

Law and Responsibility

Law itself is *neutral*. *Legal Systems* themselves are *neutral*.

Law is not: **either** *moral* **or** *amoral*; **either** *good* **or** *bad*.

As Bernard Show said: "everything has its abuse as well its use".

Law's *moral qualification* depends mainly on "how" people use *Law*.

Indeed, every *Legal System* can be *misused* and *abused*. For instance, different *weights* and *measures* can be applied **from** *case* **to** *case*. Although the *norms*, *rights* and *liberties*, are ***formally*** the *same* for every person (*Paper Rights*), they can be applied ***substantially*** in a very different way **from** *person* **to** *person* (*Real Rights*). *Exempli gratia*, the *norms* and *facts* can be *interpreted* in different ways[8]. Moreover, *Economical* and *Psychological factors* can deny people to access their *Rights* and *Liberties*. Different *economic conditions* make people have *different degrees* in the access to their *Rights* and *Liberties*. *Social Pressure*, *Groupthink*, *Propaganda*, *Authority's Compliance*, *Psychopathological Constructs* and *Standard Deviations* do not allow any

---

[8] So, even if the *Paper Rights* tells that an *identical Legal System* exists for everyone, the *Reality* is different. The *Legal System* changes **from** person **to** person.

free determination. If there is **not** any *real free determination*, **no** *responsibility* exists at all. *Responsibility* asks for a *real* and *substantial individual freedom*. So, **no** *responsibility* can exist in a *flock of sheep*. People, at the end, discover themselves to be nothing more than *slaves* "in chains", who pay for responsibility of other persons.

So …, the *question* is: who is the *responsible one* for the actions that are done by the *flock of sheep*?

Well…, the answer is obvious. The *shepherd*, who leads the *flock*, is responsible with his *guard dogs*[9].

Responsibility and *Democracy* cannot exist in a *flock of sheep*. They need a different kind of *social group*. The *flock of sh*eep must to be transmuted in a *group of Free Individuals*. This will be possible only if the *Human Being* transmutes himself **from** man **to** *superman*.

---

[9] Nowadays, we live in a very strange time. The responsible one is always the poorest sheep. The shepherd is never responsible with his guard dogs!!

Epis' Legal Theory: Law as Social Prototype. A new Legal Theory able to overcome: both, the Law of Hume; and, the conflict between Natural Law and Positive Law.

Law as a Social Prototype is a *Legal Theory* able to overcome: **both,** the *Law of Hume*; **and**, the conflict **between** *Natural Law* **and** *Positive Law*.

Law as a Social Prototype overcomes the *Law of Hume* as it belongs only to the *Descriptive Realm*. This theory clarifies: the *Nature of Law*; and, "how" the *Legal Domain* works in all its different *aspects* and *levels*. In other words, it tells us *everything* about "*triangles*" (*a là* Simmonds) without judging among "*triangles*".

Law as a Social Prototype overcomes the conflict **between** *Natural Law* **and** *Positive Law*. It explains clearly the *relationship* and *dynamic forces* between these two *Legal Dimensions* of a *Legal System*: the *implicit dimension* (*Social Ideal / Natural Law*); and, the *explicit dimension* (*Positive Law*). It evolves the *Ardigò's framework* with the *inborn psychosocial mechanisms*, which govern those *intrinsic natural processes*. Without them, *Law* and S*ociety* cannot exist.

As **both** the *implicit norms* **and** the *explicit norms* are *social norms*, it is possible to understand clearly the *underlying forces* behind this *endless recursive interaction*.

But, … wait a moment, I have already heard Simmonds' legal theory with a better formulation!! Simmonds "thieves" the Italian Ardigò of his ideas!!

Whereas I recognise the *Ardigò's Thought*, Simmonds' took a lot from *Ardigò* without: **both**, recognizing it; **and**, evolving his' *framework*.

Actually, Simmonds *regressed* and *retreated* the *empirical ideas* of Ardigò **from** a *Positive Stage* **to** a *Metaphysical Stage*. Moreover, he "transmuted" the *Ardigò's theory* **from** a good *descriptive theory* **to** a huge *philosophical nonsense*. Something that was tremendously in violation of the *Law of Hume*.

Simmonds took a lot from Ardigò; it is self-evident. Ardigò was one of *first philosopher*, who clearly described the *Legal Domain* and *Dynamics* like a *recursive endless interaction* **between** an *implicit dimension* (**Social Ideal / Justice**) **and** an *explicit dimension* (**Positive Law**)[10].

---

[10] Ardigò was one *Italian scholar*. He belongs to the *Italian Positivism*.

Simmonds has simply translated the *Ardigò's theory* in English. Instead of using the terms *Social Ideal* and *Justice*, he used *Moral Ideal* and *Moral Archetype*.

But, the *structure*, the *dynamics* and *connexions* between the *implicit* and *explicit Domains*, are those that Ardigò used.

There is only one difference. Whereas Ardigò evolved the *previous Thought* **from** a *Metaphysical Stage* **to** a *Positive Stage*, Simmonds regressed it **from** a *Positive Stage* **to** a *Metaphysical Stage*!!

On the contrary, Epis wanted to advance the *Ardigò's Positive Thought*. He did it, as it was explained *supra* (above).

Justice and Morality

The philosophy of Nietzsche criticizes any attempt to found the *Rule of Law* "outside the compass of the earth". But, Nietzsche is not *amoral*. Nietzsche does not renounce *values*. On the contrary, Nietzsche advanced a *Positive Idea* of *Morality*. The *Positivism* of Nietzsche was an *Individual Positivism*. As I explained *supra* (above), he overturned the *perspective*.

So, *Nietzsche's Morality* and *Ardigò's Justice* can be integrated.

Whereas *Morality* comes from the *Living Experience* of each *Individual*, *Justice* comes from the *Living Experience* of each *Social Organism* (Society).

In other words, *something* is **either** *just* **or** *unjust* in terms of *Social Life* and *Existence*; *something* is **either** *good* **or** *bad* in terms of *Individual Life* and *Existence*. Both of them are the *best adaptation* in terms of *values*, which **both** an *Individual* **and** a *Social Organism* can do, living in those *particular historical environments*, they experienced.

So, the *Social Dimension* and the *Individual Dimension* coexist in harmony.

Between *Justice* **and** *Morality*, the same *dialogical recursive interaction*, which exists between the *implicit* and *explicit Legal Domains*, happens. *Justice* is the *outcome* of the *Social Dialectic* among the different *Individual Moralities*.

When *Morality* moves **from** the *Society* **to** the *Individuals*, *Morality* and *Justice* (*Social Ideal*) overlap. This is not good. It means that all the *Individual Dimensions* are *uniformed* and *homologated* to the *Social One*. As a result, *Justice* cannot be the *outcome* of the *Social Dialectic* among the *different moralities* and *values* of the *Individuals*. As *Individuals* have to conform themselves to the *Social Ideal*, they cannot have and develop

any their own <u>*Real Morality* and *Values*</u>. In fact, a *homologated individual* is nothing more than a *lemming* and/or a *sheep* of the *flock*. Homologation becomes part of his/her *habitus*, *forma mentis*. As the *Social Ideal* does not come from the *Social Dialectic* among the *very different* and *ununiformed individual moralities* and *values*, the *Social Ideal* comes from *somewhere else*.

So the question is: Where does *Social Ideal* come from?

If it does not come from *Social Dialectic* among the *very different moralities* of the *Individuals* that are at the bottom of the *Social Pyramid*, **then** it can only come from the top of the *Social Pyramid*. It means that the *Social Ideal* is a creation of the *Power*. It is an *arbitrary construct* that has been created by *Power* to advantage its own interests. As *Power* does not want to reveal the *Real Nature* of the *Social Ideal* to its servants, *Power* presents its *Social Ideal* like an *Idol*. But, *Social Norms* (it does not matter if they are: *Law*; *Morality*; *Values*; etc…) do not come from any *Metaphysical Realm*. <u>*Social Norms* are the *most concrete* and *empirical* thing</u>. As I have widely explained and demonstrated, *Social Norms* come from the *Social Conflict* and *Social Dynamic Forces* that govern and underlay the *Social Organism*.

So, the *Individual Morality* cannot be homologated to the *Social Ideal*. If it happens, *Justice* is reduced to be "the *interest* of the most powerful" *a là* Trasimacus.

This is why Nietzsche does not want believers, but people who trust themselves.

"… Verily, I advise you: depart from me, and guard yourselves against Zarathustra! … Ye say, ye believe in Zarathustra? But of what account is Zarathustra! Ye are my believers: but what account are all believers! Ye had not yet sought yourselves: then did ye find me. So do all believers; therefore all believers is of so little account. Now do I bid you lose me and find yourself; and only when ye have all denied me, will I return unto you." (*Thus Spake Zarathustra*, I, XXII).

On the contrary, **if** each *individual* is free to create his own Morality, **then** *Justice* is the outcome of the *Social Dialectic* among all these *different views*. So, *Justice* comes from the bottom of the Pyramid, instead of the top. In this case, a *Real Democracy* can exist.

Individuals have to live of their own *values* and *truths*. They cannot live for the *values* and *truths* of someone else. They can only participate to the

Social Dialectic, bringing their *unique living experience*. It is the only thing, they can really know and understand.

"Ultimately, no one can extract from things, books included, more than he already knows. What one has no access to through experience one has no ear for" (*Ecce Homo*, Why I write good book, I).

So, Nietzsche recognises the importance of the *Rule of Law* inside the actual level of *conciseness* of the Humanity. But, *Rule of Law* does not come from *Metaphysics*. *Rule of Law* comes from the *Individual* and *Social Empirical Live*. Nietzsche would have agreed with Ardigò.

Rule of Law like Supremacy of Law above Power

According to Nietzsche, *Rule of Law* could be understood like the *Legal Principle*: *pacta sunt servanda*. It is a Latin brocard[11] that means: the agreements have to be respected.

---

[11] *Brocards* are *Legal Principles* that have been created during the *Medieval Age*. They have been taken by the *Roman Law* (which was considered an expression of *Natural Law*). The name "brocard" came from the name of the *bishop of Worms*, Burchard, who died in 1025. The bishop Burchard wrote 20 volumes: *Regulae Ecclesisticae*. These books are a collection of *maxims* and *sayings*. Some of those *Legal Principles* were collected in those *tomes*.

Pacta sunt servanda is the *first* and *essential principle* for the existence of any *Legal System* and any *Social Organism. No Legal System*, *no Social Organism*, indeed, can exist without it. **If** the *agreements* are not respected, **then** the *Social Organism* cannot exist as all its parts (*Individuals*) will be in an endless *conflict* and *war*.

So, as the highest *pactum* is the ***Social Contract***, *pacta sunt servanda* applies, in first instance, to it. The *Social Contract* is **both** an *implicit* **and** an *explicit agreement* among *individuals*, who decide to form a *Society* and/or *Nation*. It contains the *main values* (***Social Ideal***) of the *Society*. The *Social Contract* is the *hard core* of the *Ardigò's Social Ideal*.

As the *Government* receives its *powers* from the *Social Contract*[12], *Government* has only *those powers* that the *Social Contract* gives to it.

So, *Government* must comply with: **both**, the *regulations* that limit its *powers* and their exercise; **and**, the *values* and *legal principles* that come from the *Social Ideal*.

In other words, this means that *Rule of the Law* is the *Supremacy of the Law above the Power*. *Power* is submitted to the *Social Ideal* that comes

---

[12] The *Government* does not receive *those powers* from *God*.

from the *Social Dialectic* among *free Individuals* with *different Moralities* and *Values*.

Only in these terms, an *impersonal Power a là* Ardigò can lead the *Society*.

On the contrary, we have a *Power* that betrays the **Social Ideal** to impose its own *tyranny*. Therefore, the *Social Ideal* will be reduced to be a *Horse of Troy* as I wrote in *Rule of Law and English Legal System*.

According to Nietzsche, the *Prudence*, which *human beings* have learned from their *Living Experiences*, advices people to use *Rule of Law* like an *instrument*.

"*Rule of law as a mean.* − Law, reposing on compacts between *equals* continues to exist for so long as the power of those who have concluded these compacts remains equal or similar; prudence created law to put an end to feuding and to *useless* squandering between forces of similar strength. But *just as definitive* an end is put to them if one party has *become* decisively *weaker* than the other: then subjection enters in and law *ceases*, but the consequence is the same as that previously attained through the rule of law. For now it is the *prudence* of the dominant party which advises that strength of the subjected should be *economized* and not uselessly squandered: and often the subjected find themselves in more favourable

circumstances than they did when they were equals. – The rule of law is thus a temporary means advised by prudence, not an end" (*Human, All too Human*, II, 26).

So, accounting to Nietzsche, *Rule of Law* has two origins.

The **former** is originated inside a *Utopian Society* where *everyone* is *formally* and *substantially equal* to any other person. In this case, *Rule of Law* comes from a *Social Contract* that is done by *Equal Forces*. *Rule of Law* is the *outcome* of the *Social Experience* that has been done by those equal persons/forces. They have learned that it is useless an endless conflict among *them.*

The **latter** is originated inside a society where there is not a substantial equality among its members. Nevertheless, the *dominant persons* have learned that it is sager to economize *their forces* than to waste them with useless conflicts.

In both the cases, *Rule of Law* does not come from *Metaphysics*. *Rule of Law* comes from the *Individual* and *Social Living Experience*. From this experience, *Prudence* advices the need to use *Rule of Law* like a mean. It is a *conscious* and *rational choice*.

In other words, *Rule of Law* is a *mean* to avoid a *bellum omnium contra omnes* (Hobbes, 1909). But, Nietzsche does not advice to create a *Leviathan a là* Hobbes (1909). Nietzsche recommends that it is possible to resolve the problem overturning the perspective. According to this perspective, *Rule of Law* is compatible with the *Ardigò's Social Ideal*. *Rule of Law* is not compatible with the Simmonds' *Moral Ideal*, as it would be reduced to be a *justification* for the *tyranny* of the *Leviathan*. But the latter, it is not *Rule of Law* as it is the opposite of the *Supremacy of the Law above the Power*.

NIETZSCHE AND DEMOCRACY

Epistemology and Morality versus Politics: from the creation of the Superman to the realization of Utopia

I agree with Thomas Mann (1948). Nietzsche is "remote from politics"[13]. Nevertheless, the demand to investigate the "political philosophy" of Nietzsche springs out from the different attempts (which have been done from time to time) to use his "innocently spiritual" *Thought* (Thomas Mann, 1948) to support *anti-democratic Regime*.

Although Schutte (1984) and Detwiler (1990) argue that the *Nietzsche's Thought* can justify "highly authoritarian systems of government", Nietzsche is against any *anti-democratic Regime*. This is clear, as I wrote *supra* (above). Nietzsche defends and supports the *Individual Freedom*. His philosophy is *ontological incompatible* with any *totalitarian Regime*. *Individual Freedom* and *authoritarian Regimes* cannot co-exist together.

---

[13] Thomas Mann (1947), *Nietzsche's Philosophy in the Light of Contemporary Events*, Washington: Library of Congress.

Indeed, according to Montinari (1975): "*all'interno di una … democrazia … non puo' mancare una "dimensione Nietzsche", la dimensione … della liberta' di spirito che nasce dalla carica critica, razionale e liberatrice del suo pensiero e che non si stanca mai di rimettere tutto in questione*"[14].

Nietzsche's Thought was corrupted by Elisabeth Nietzsche Foster (his sister). She made *Nietzsche's Thought* be compatible with the *German political ideology* of Nazism (Montinari, 1975; Wicks, 2004)[15].

But, *Nietzsche's Philosophy* was clearly *anti-Nazism*.

The *anti-Nazism* of Nietzsche is self-evident from:

1) his anti-racism;

---

[14] " Inside a Democracy … a "Nietzsche's dimension" cannot miss. It is the dimension of the "freedom of Spirit" that comes from the critical, rational and liberating, power of his thought, which re-put everything under re-examination without getting tired".

[15] Elisabeth Nietzsche Foster and her husband Bernhard Foster were both Nazis. They lived in Paraguay. When, they came in Germany to take care Friedrich Nietzsche, Elisabeth used the philosophy of her brother to elevate her position in the Nazis Society. In Paraguay, Elisabeth and her husband worked actively "to establish an Arian, anti-Semitic German Colony called" *Nueva Germania* (Wicks R. 2004). This is *how* the *Nietzsche's Thought* was made compatible with the nationalism of Hitler and Mussolini (Wicks R. 2004).

2) his idea that "the concept of "pure blood" is the opposite of a harmless concept";

3) his *anti*-anti-Semitism (Duffy M. F. and Mittelman W., 1988);

4) the idea of man like a *free thinker*;

5) his ideas about *idols*;

6) etc… .

On the contrary, Hunt (1991) argues that the *Nietzsche's Thought* can be interpreted in any possible way, due its ambiguity. So, *Nietzsche* can appear: *anarchist*; *totalitarian*; *liberal;* etc…; … as Nietzsche expressed himself like a Sphinx (Blondel, 1991). But, Nietzsche does "not hold any of the standard political ideologies" (Hunt, 1991). So, it is *meaningless* an account such as that one of Ansell-Pearson (1994). The latter attempted: **before**, proving that "Nietzsche is liberal individualist"; **then**, explaining "on which he departs from liberalism"!!

This sketch indicates *how* much *Nietzsche's work* was strongly misunderstood.

Paradoxically, Nietzsche predicted this outcome.

"But it would be a complete contradiction of myself if expected *ears and hands* for my truth already today: that I am not heard today, that no one

today knows how to take from me, is not only comprehensible; it even seems to be right" (*Ecce Homo*, Why I write good book, I).

For these reasons, I agree with Warren (1985) when he says: "… that the Nietzsche' s thought has entered the cannon of political philosophy in an unsatisfactory manner, and that the relation of Nietzsche and political philosophy needs to be reconceived". Nevertheless, I do not agree with Warren (1985) on the "strategy for doing" this *re-evaluation*. Instead of starting from the centrality of the *philosophy of power* and *human agency*, I suggest to follow the exegetic *criteria*, which Nietzsche gave us in *Ecce Homo*: "*Listen to me! For I am thus and thus. For not, above all, confound me with what I am not!!*" (*Ecce Homo*, Prologue).

The mistake to use the concept of *Will to Power* comes from a "literal application" of this expression without understanding what it means.

Will to Power does not refer to *individuals*. It refers to the *World itself*.

As *individuals* are parts of the *World*, they participate to *Will to Power*.

"*This world is the will to power — and nothing besides*! And you yourselves are also this will to power — and nothing besides! (Nietzsche, *Will to Power*, 1067).

Will to power is the *Dynamical Force* that makes *World / Existence* be. It looks like the concept of *Spirit* that is used inside the *Hermeneutic Philosophy* (Gadamer, Heidegger, Betti, etc…). Indeed, according to Davey (1991): "… there *is* a substantial hermeneutic foundation to his thinking which has, astoundingly, been neglected".

The present writer affirms that the *political thought* of Nietzsche should be extracted by his *moral* and *epistemological philosophy*. The *political philosophy* of Nietzsche is an *indirect consequence* of his *moral* and *epistemological ideas*.

The difficulty to understand Nietzsche comes from the ambiguity of his *discourse*. His aphorisms look like *Buddhist Zen Koans*. Nietzsche used ambiguity as, at the end, "no one can extract from things, books included, more than he already knows. What one has no access to through experience one has no ear for" (*Ecce Homo*, Why I write good book, I). So, *long explanations* are useless!!

"Every deep thinker is more afraid of being understood than of being misunderstood. The latter perhaps wounds his vanity; but the former

wounds his heart, his sympathy, which always says: "Ah, why would *you* also have as hard a time of it as I have?"" (*Beyond the Good and Evil*, 290).

The *political idea* of Nietzsche is to create a *Utopian Society* that is composed by *free Individuals*. As *Individuals* must be the opposite of *lemmings*, the *Utopian Society* has to be the opposite of a *flock of sheep*.

Nietzsche expressed his *anti-authoritarian* view, *exempli gratia*, in *On the New Idol* (Nietzsche, *Thus Spake Zarathustra*, I). <u>The *State* is described to be an *Idol* that imposes its *Moral Ideal a là Simmonds* onto its *servants.*</u> So, **between** the *Power of the State* (*Leviathan*) **and** the *Simmonds' Moral Ideal* (the *Cultural Paradigm* that is imposed by the *State*) there is a strong bond. This is clear from the *Nietzsche's works*, even if his *Cultural Aspects* and *Implications* have usually been underestimated (Blondel, 1991).

Although some authors have attempted to restrict the interpretation of *On the New Idol* to some particular types of forms of Government (Sokel, 1983; Strong, 1976), *these interpretations* "have nothing to do with the text of *On a New Idol*" (Hunt, 1991)[16].

---

[16] Sokel (1983) restricts the application of *on the New Idol* only to "ossified bureaucratised State"; whereas Strong (1976), only to "nationalistic States".

On the New Idol refers to every *State* that has not transmuted itself **from** the *flock of Sheep* **to** the *Utopian Society*. Indeed, *sheep/lemmings* have always homologated themselves to *something* that was given to them. On the contrary, a *group of free individuals* is made by *free spirits*. This is clear from the literature that has influenced *Nietzsche's work*. *Exempli gratia*, Holderlin (1822; 1994) was one of his preferred writers (Blondel, 1991)[17].

Nietzsche does not want a *society* of *imitators* (*lemmings*).

"*Imitators*. – A: "What? You want no imitators?" B: "I do not want people to imitate me; I want everyone to set his own example, which is what *I* do". A: "Thus –?" (*Gay Science*, 255)

Nietzsche does not want *believers*. *Believers* are *servants* of *idols*.

---

[17] Holderlin (1822; 1994) in the *Hyperion* wrote: "… The person who wants the State to be a school for morality has no idea how much he is sinning. None the less, wanting the State to be his heaven, man has created a hell. The State is a rough walnut shell covering life, nothing more. It is the wall of the garden in which men grow flowers and fruits. But what use is the garden wall if the soil is dry?".

These ideas are present in the *On the New Idol* of Nietzsche.

All the *conflicts* and *wickedest things* have been the consequence of *believers' determinations*. <u>They want to impose their own *Moral Ideal* (*a là* Simmonds) onto any other one.</u> The *Christian Church* gave an example of this with its *Holy Inquisition*. <u>*To save* the *soul* of people from the *fire* of the *Inferno* and Satan, *Inquisitors* created the *Hell* on the Earth</u>. Like *real devils*, they enjoyed: to *torture* and to *burn* people; to commit any atrocity. They were *servants* of Satan; they were not *ministers* of God at all. They betrayed God. They killed Him and His Teaching!!

Nowadays, this is done with the *New Profane Inquisition*. *Psychopathology* is used and misused to reload the *Hell* on the Earth (Epis L., 2011/2015). *Its constructs*, *standard deviations* and *demand of Homologation*, are the *new Idols* "… in the name of …" new and old forms of *abuse*, *torture* and *violence*, can be done.

The only way *to exist* from this *foolishness* is to create *Utopia*.

The only way to create *Utopia* is to *transmute* the *Human Being* **from** *man* **to** *superman*.

This is possible only proceeding with the *three passages* described by Nietzsche: *Camel*; *Lion*; *Child*. *Nietzsche's philosophy* has several *Alchemical Elements*. Indeed, these *three passages* are a *new metaphor* for the *three Alchemical Stages*: *Nigredo* (the Black Stage *Alchemicae*

Operae); *Albedo* (the White Stage *Alchemicae Operae*); *Rubedo* (the Red Stage *Alchemicae Operae*). But, I do not know about *These Enigmatic Things*! So, I cannot tell you about *Them*. Yet, you may read other writers such as: *Zosimus Alchemista* (Zosimos of Pannopolis); *Maria Prophetissima* (Mary the Prophetess; Mary the Jewess); *Stephanus Alexandrinus* (Stephanos of Alexandria; Stephen of Alexandria); *Pseudo-Democritus*; Gabir Ibn Hayyan; Senior Zadith; Paolo di Taranto; Basilius Valentinus (Johann Tholde); …; Julius Evola (1931); … and/or *someone else*, who knows about *Them*.

The *superman* is *what* I descried in the first chapter. So, I will not long more on this topic. Yet, I want to tell *something* about the view of Thiele.

I disagree with the "heroic individualism" presented by Thiele (1990). "The Hero has the fate of Tantalus, whose reach is insufficient and whose efforts unending. For the fruit of his struggle is unattainable: he is a mortal who seeks immortality, a man who desires to be a god. But as he reaches for what he cannot grasp, he also grows in power, and therefore welcomes the temptation to overstep his limits. Unaware or contemptuous of the boundaries of human life, the hero is forever in state of transgression. He is

hubristic, and he both suffers and glories in his struggles to be more than he is fated to be".

Thiele (1990) has completely misinterpreted the concept of hero of Nietzsche. On the contrary, Thiele (1990) described the *ideal* of the *romantic hero*, *exempli gratia*, that one, which was used by Byron (1841) in his *Childe Harold's pilgrimage*.

The *superman* is a different kind of hero.

He:

1) overcomes his old nature of follower;

2) transcends *duality* and the antinomy **between** *egoistic* **and** *un-egoistic*[18], reaching the *Unity*[19];

---

[18] "The propositions over which everybody is in fundamental agreement – not to speak of everybody's philosophers, the moralists and other hollow-heads and cabbage-heads – appear with me as naïve blunders: for example that belief that "un-egoistic" and "egoistic" are antithesis, while the ego itself is merely a "higher swindle", an "ideal". There are neither egoistic nor un-egoistic actions: both concepts are psychologically nonsense!" (*Ecce Homo*, Why I write good books, V).

"What makes one heroic? – To approach at the same time one's highest suffering and one's highest hope" (*The Gay Science*, 268).

[19] The concept of unity is so clear, so evident, obvious, in his writing: "An "idea" – the antithesis Dionysian and Apollonian – translated into metaphysic; history itself as the evolution of this "idea"; in tragedy this antithesis elevate to unity; from this perspective things which had never before caught sight

3) goes "*beyond the Good and Evil*" to obtain the condition describe by Alexander Pope in *An Essay an Man*: "Self-love and Social are the same".

Nietzsche does not desire to be *god*. Nietzsche does not want to create a new *idol*. He wants to be a *Child*[20] (*Thus Spake Zarathustra*, I, I) as I explained *supra* (above).

"…"*Dead are all the gods: now do we desire the Superman to live*" – let this be our final will at the great noontide!" (*Thus Spake Zarathustra*, XX, III).

---

of one another suddenly confronted with one another, illuminated by one another and comprehended…"

(*Ecce Homo*, The birth of Tragedy, I).

[20] "Three metamorphoses of the spirit have I designated to you: how the spirit become a camel, the camel a lion, and the lion a child"

…

"But tell me, my brethren, what the child can do, which even the lion could not do? Why hath the preying lion still to become a child?

Innocence is the child, and forgetfulness, a new beginning, a game, a self-rolling wheel, a first movement, a holy Yea.

Aye, for the game of creating, my brethen, there is needed a holy Yea unto life: its own will, willeth now the spirit; his own world winneth the world' outcast" …

The *Child* is a *creator* of his own *values*. The *Child* has *awareness*. The *Child* reaches the *Unity* that has been described by Alexander Pope with his masterpiece: *An Essay on Man*.

"Nothing is foreign: Parts relate to whole:

One all-extending all-preserving Soul;

Connects each being, greatest with the least;

Made Beasts in aid of Man, and Man of Beast;

All serv'd, all serving! Nothing stands alone;

The chain holds on, and where it ends, unknown".

Alexander Pope, *An Essay on Man*.

Nietzsche expressed this interdipende (*exempli gratia*) with these words: "Thou great star! What would be thy happiness if thou hadst not those for whom thou shiniest!" (*Thus Spake Zarathustra*, Zarathustra's Prologue).

The aim of *superman* is: to find himself … "*…find yourself…*" (*Thus Spake Zarathustra*); to be free from any others … "… become what you are" (*Thus Spake Zarathustra*). It is not to dominate the other persons, but to allow them to be also free.

The aim of *superman* is to be genuine: "Are you genuine? Or just a play-actor? A representative? Or the actual thing represented? – Ultimately you are even just an imitation play-actor …" (*Twilight of the Idols*, Maxims and Barbs, XXXVIII).

The aim of *superman* is to go beyond the duality *good* and *evil*: "Good and evil are the prejudice of God" (*Gay Science*, 259).

For all these reasons, I disagree with Thiele (1990).

"To say it again, little of "ill will" can be shown in my life; neither would I be able to speak of barely a single case of "literally ill will". On the other hand all too much of *pure folly*!" (*Ecce Homo*, Why I write good books, I). This *pure folly* is: the *pure folly* of creating a *better human being*; the *pure folly* to create a *Utopian Society*.

A Society where the *Human Being* has transmuted: "All … passions in … virtues, and all … devils (in) angels" (*Thus Spake Zarathustra*, I, V). A Society where "the noble man also helps the unfortunate, but not – scarcely – out of pity, but rather than from an impulse generated by superabundance of power" (*Beyond Good and Evil*, 260).

A New Hope: from a flock of sheep to a "group" of Free Individuals

The *individuals*, who are able to pass through the *three stages* (*Camel*; *Lion*; *Child*), arrive to *transmute* themselves from *men* to *super-men*.

This means two things. **On one hand**, they *transmute* themselves. **On the other hand**, they *transmute* the *Society* whose they are members. As they are not any more *lemmings*, *Society* is not any more a *flock of sheep*.

Society *transmutes* itself from a *flock of sheep* to a *group* of *free Individuals*, who are able to *co-exist* and to *collaborate* in *their own* (very strong) *differences*. So, a *true Democracy* will begin.

As I wrote *supra* (above), **no democracy** (at all) can exist among *flocks of sheep*. Since they are *enslaved* by *homologation*, only *Tyranny* exists.
It does not matter the *form* and/or the *name* that has been given to this *tyranny*. It does not matter the *reason* "… in the name of …" *Homologation* is demanded.

Flocks of sheep are always dominated by a *Totalitarian Regime*. They ask for *homologation*. They ask for *idols*. They are not able to live in a different way.

On the contrary, *Utopia* is made by *Free Individuals*.

So, you have to choose: do you want to be a *lemming/sheep* or a *Free Individual*?

Do you want to stay in a *flock of sheep* or to create *Utopia*?

Only you, by yourself, can decide. Only you, by yourself, can free yourself.

No God, No Bodhisattwa, No Other One Else, can help you in this.

It is *Time* for a *New Hope*. It is *Time* for a *New Era / Epoch*.

It is *Time* for *who* is ready.

BIBLIOGRAPHY

Alder J. (1989), *Constitutional and Administrative Law*, London: Macmillan,

Allan T. R. S. (1993), *Law, Liberty, and Justice – The Legal Foundations of British Constitutionalism*, Oxford: Oxford University Press

Allen M., Thompson B. and Walsh B. (1994), *Cases and Materials on Constitutional and Administrative Law*, UK: Blackstone Press Limited.

Ardigò A. (1901), *La Morale dei Positivi*, in *Opere Filosofiche*, Padova.

Asch S. E. (1951), Effect of group pressure upon the modification and distortion of judgment. In H. Guetzkow (ed.), *Groups, leadership and men*. Pittsburgh, PA: Carnegie University Press.

Asch S. E. (1955 a), Opinions and Social Pressure in *Scientific American*, November 1955, pp. 31 – 35

Asch S. E., (1955 b), Studies of independence and conformism: a minority of one against a unanimous majority. *Psychology Monographs*, 70, 1 – 70.

Asch S. E. (1956), Opinions and social pressure. *Scientific American*, 193 (5), 31-35.

Barendt E. (1998), *An Introduction to Constitutional Law*, Oxford: Oxford University Press

Beale A., *Essential Constitutional Law*, London: Cavendish Publishing limited, 1994

Byron G. G. [1788 − 1824] (1841), *Childe Harold's pilgrimage : complete*, London: C. Daly

Blondel E. (1991), *Nietzsche: the Body and Culture − Philosophy as a Philological Genealogy*, London: The Athlone Press

Boutmy E. (1891), *Studies in Constitutional Law*, London: Macmillan and Co.

Brazier R. (1991), *Constitutional Reform*, Oxford: Clarendon Press

Brief A. P., Dukerich J. M., & Doran L. I. (1991), Resolving ethical dilemmas in management: experimental investigation of values, accountability and choice. *Journal of Applied Social Psychology*, 21, 380 − 396.

Brief A. P., Buttram R. T., Elliott J. D., Reizenstein, R. M., & McCline R. L. (1995). Releasing the beast: A study of compliance with orders to use race as selection criterion. *Journal of Social Issues*, 51, 177 − 194.

Cameron F. (2002), *Nietzsche and the "Problem" of Morality*, New York: Peter Lang

Chiorri C. (2009), *Metodologia della Ricerca in Psicologia dello Sviluppo*, materiale didattico per il corso tenuto preso l'Università di Genova in *Metodologia della Ricerca in Psicologia dello Sviluppo* nel 2009, non pubblicato.

Conklin W. E. (1989), *Images of a Constitution*, Toronto: University of Toronto Press

Cotterrell R., *The Sociology of Law*, London: Butterworths, 1992.

Davey N. (1991), Hermeneutics and Nietzsche's early Thought, in Ansell-Pearson K. (ed.), *Nietzsche and the Modern German Thought*, London and New York: Routledge

Davis K. C. (1980), *Discretionary Justice - a preliminary enquire*, USA: Greenwood Press

Detwiler B. (1990), *Nietzsche and the Politics of Aristocratic Radicalism*, Chicago: University of Chicago Press

Dicey A. V. (1902), *Introduction to the study of the Law of the Constitution*, London: Macmillan and Co.

Duffy M. F. and Mittelman W. (1988), Nietzsche's Attitudes Toward the Jews, in *Journal of the History of Ideas*, Vol. 49, No. 2. (Apr. - Jun., 1988), pp. 301-317. Retrived the 15 December 2005 in the World Wilde Web at the URL: http://links.jstor.org/sici?sici=0022-

5037%28198804%2F06%2949%3A2%3C301%3ANATTJ%3E2.0.
CO%3B2-F

Epis L. (2001), *Ermeneutica Giuridica – verso una Teoria Generale*, Tesi di Laurea di Dottore in Giurisprudenza, Università di Genova, Italia). Opera attualmente non pubblicata. Thesis for the degree of Doctor in Law, University of Genoa, Italy. At the moment, it is not published.

Epis L. (2011 / 2015), *De Nova Superstitione. Alcune Questioni sullo Status Epistemologico della Psicologia, Psicopatologia e Psicanalisi*. Publushed in: www.lukae.it. See page: "*Psychology & Epistemology – Psicologia & Epistemologia*".

Esser J. K. and Lindoerfer J. S. (1989), Groupthink and the space shuttle Chyallenger accident: Toward a quantitative case analysis. *Journal of Behavioral Decision Making*, 2, 167 – 177.

Esser J. K. (1998). Alive and well after 25 years: A review of groupthink research. *Organizational Behavior and Human Decision Processes*, 73, 116 – 141.

Evola J. (1931), *La Tradizione Ermetica – Nei suoi Simboli, nella sua Dottrina e nella sua "Arte Regia"*, quarta edizione corretta con Saggio introduttivo di Seyyed Hossein Nasr and Appendice di Stefano Andreani, Roma: Mediterranee (2006).

Fenwick H. (1993), *Constitutional and Administrative Law*, London: Cavendish Publishing limited

Greppi E. (2001), *Crimini di Guerra e contro l'umanita' nel diritto internationale*, Torino: Utet

Greenstein F. I. (1975), personality and Politics, in Greenstein F. I. And Polsby N. W. (eds.), *Handbook of Political Science*, *Micropolitical Theory* (Vol.II), USA: Addison – Wesley Publishing Company

Heuston R. F. V. (1964), *Essays in Constitutional Law*, London: Stevens and Sons

Herling D. (1995), *Briefcase on Constitutional and Administrative Law*, UK: Progressive Printing

Hobbes T. [1588-1679] (1909), *Leviathan*, Oxford: Clarendon Press

Hofling C. K., Brotzman E., Dalrymple S., Graves N. & Pierce C. M. (1966), An experimental study in nurse-physician relationships. *Journal of Nervous and Mental Disease*, 143, 171 – 180.

Hood Phillips O. and Jackson P., (1987), *Constitutional and Administrative Law*, London: Sweet and Maxwell

Holderlin F. (1822), *Hyperion, oder der Eremit in Griechenland*, Stuttgart: J.G. Cotta; English translation in Holderlin F. (1994), *Hyperion and selected poems*, New York: Continuum

Hume D. [1711 – 1776], (1739), *A Treatise on Human Nature*, London: printed for John Noon

Hume D. [1711 – 1776] (2000), *A Treatise on Human Nature*, Oxford: Oxford University Press

Hunt L. H. (1991), *Nietzsche and the Origin of Virtue*, London and New York: Routledge

Keir D. L. and F. H. Lawson (1979), *Cases in Constitutional Law*, Oxford: Oxford University Press

Kelsen H. [1881 - 1973] (1970), *Pure Theory of Law*, Berkley: University of California Press

I Meridiani, Alchimia, I Testi della Tradizione Occidentale (a cura e con Saggio introduttivo di Michela Pereira), Milano: Arnoldo Mondadori Editore (2006)

Jennings I. (1943), *The Law and the Constitution*, London: University of London Press

Jowell J. (2000), The Rule of Law, in Jowell J. and Oliver D. (eds) (2000), *The Changing Constitution*, Oxford: Oxford University Press

Loveland I. (1996), *Constitutional Law – A Critical Introduction*, London: Butterworths

Markie P. (2004), "Rationalism vs. Empiricism", *The Stanford Encyclopedia of Philosophy (Fall 2004 Edition)*, Edward N. Zalta (ed.), URL = http://plato.stanford.edu/archives/fall2004/entries/rationalism-empiricism/

McBurney, D. H. (2001), *Research Methods*, USA: Wadsworth (a division of Thomson Learning Inc.). I have used the Italian translation: *Metodologia della Ricerca in Psicologia*, Bologna: il Mulino.

Montinari M. (1975), *Che Cosa Ha "Veramente" Detto Nietzsche*, Roma: Astrolabio – Ubaldini Editore

Milgram S. (1963), The behavioral studies of obedience. *Journal of abnormal and social psychology*, 67, 467 – 472.

Milgram S. (1965), Some Conditions of Obedience and Disobedience to Authority. *Human Relations*, 18, pp. 57 – 76

Milgram S. (1974), *Obedience to Authority*, New York: Harper and Row

Moorhead G., Ference R., & Neck C. P. (1991). Group decision fiascoes continue: Space shuttle Challenger and a revised groupthink framework. *Human Relations*, 44, 533 – 550.

Nietzsche F. W. [1844 – 1900](2001), *The Gay Science*, Cambridge: Cambridge University Press

Nietzsche F. W. (1998), *Twilight of the Idols*, Oxford: Oxford University Press

Nietzsche F. W. (2003), On Truth and Lie in the Extra Moral Sense, in *The Human Event Web Reader* (spring 2003), Arizona State University, retrieved the 18 December 2005 at the Wilde World Web, at the address: http://www.public.asu.edu/~jacquies/172-reader-2003.html

Nietzsche F. W. (1907), *Beyond Good and Evil*, Edinburgh: The Darien Press

Nietzsche F. W. (1995), *Human, All Too Human I*, USA: Stanford University Press

Nietzsche F. W. (1995), *The Complete work of Friedrich Nietzsche*, USA: Stanford University Press

Nietzsche F. W. (1967), *Thus Spake Zarathustra*, London: George Allen and Unwin LTD

Nietzsche F. W. (1994), *On the Genealogy of Morality*, Cambridge: Cambridge University Press

Nietzsche F. W. (1970 e 1977), *La mia Vita*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *La Nascita della Tragedia*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Sull'Avvenire delle Nostre Scuole*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), David Strauss, *L'uomo di Fede e lo Scrittore*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Sull'utilità e il Danno della Storia per la Vita*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Schopenhauer come Educatore*, Milano: Adelphi

Nietzsche F. W. (1970 e1977), *La filosofia nell'Epoca Tragica dei Greci*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Umano, Troppo Umano I*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Umano, Troppo Umano II*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Aurora*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *La Gaia Scienza e Idilli di Messina*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Così Parlò Zarathustra*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Al di là del Bene e del Male*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Genealogia della Morale*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Crepuscolo degli Idoli*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *L' Anticristo*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Ecce Homo*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Scritti su Wagner*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Ditirambi di Dionisio*, Milano: Adelphi

Nietzsche F. W. (1970 e 1977), *Appunti Filosofici*, 1867 – 1869, Milano: Adelphi

Orlando V. (1940), Il processo del Kaiser, in *Scritti vari di Diritto Pubblico e Scienza Politica*, Milano

Perelman C. (1959), *La Giustizia*, Torino: Giapichelli

Perelman C. (1979), *Logica giuridica – Nuova Retorica*, Milano: Giuffre'

Perelman C. and Olbrechts – Tyteca L. (1958), *Traité de l'argumentation - la nouvelle rhétorique*: Paris : Presses universitaires de France

Popper K. R. (1995), *The Open Society and its Enemies*, London : Routledge, 1995.

Posner M., Goldsmith R. and Welton K. E. (1967), Perceived distance and the classification of distorted patterns in *Journal of Experimental Psychology*, 81, 10-15

Posner M. and Keele (1968), On the genesis of abstract idea, in *Journal of Experimental Psychology*, 77, 353-363

Pruss A. R. (2002), *Ex Nihilo Nihil Fit: Arguments New and Old for the Principle of Sufficient Reason*. The article was retrieved in the World Wide Web. It was read the 15 December 2005. The internet address is written above: http://www.georgetown.edu/faculty/ap85/papers/ENNFtalk.html

Raz J. (1979), *The Authority of the Law – Essays on Law and Morality*, Oxford: Oxford University Press

Rohls J. (1995), *Storia dell'Etica*, Bologna: Il Mulino

Rousseau J. J. [1712 – 1778] (1993), *Emile*, London: Dent

Schutte O. (1984), *Beyond Nihilism: Nietzsche Without Masks*, Chicago: University of Chicago Press

Schwartz B. (1955), *American Constitutional Law*, Cambridge: Cambridge University Press

Shapiro I. (eds) (1994), *The rules of law*, nomos XXXVI, New York: New Your University Press

Sherif M. (1935), A Study of some social factors in perception in *Archives of Psychology*, number 187

Sherif M., (1936). The psychology of social norms. New York: Harper.

Sherif M. (1937). An experimental Approach to the Study of Attitudes in *Sociometry*, 1, pp. 90-98

Sherif M., 1935, 1936, 1937

Simmonds N. E. (2005a), Law as a Moral Idea, in *University of Toronto Law Journal*, 55, 61-92

Simmonds N. E. (2005b), Jurisprudence as a Moral and Historical Inquiry, in *Canadian Journal of Law and Jurisprudence*, 18, 1-28.

Spinosa B. [1632-1677] (1996), *Ethics*, London: Penguin

Sternberg R. J. (2000), *Psicologia Cognitiva*, Padova: Piccin

Sokel W. H. (1983), Political uses and abuses of Nietzsche in Walter Kaufmann's Image of Nietzsche, in *Nietzsche Studien*, 12, pp. 436-442

Strong T. (1976), *Friedrich Nietzsche and the Politics of Transfiguration*, Berkeley: University of California Press

Thiele L. P. (1990), *Friederich Nietzsche and the Politics of the Soul - A Study of Heroic Individualism*, USA: Princeton University Press

Thomas Mann [1875 – 1955] (1948), *Nietzsches Philosophie im Lichte unserer Erfahrung*, Berlin: Suhrkamp

Turpin C. (1995), *British Government and the constitution – Texts, Cases, and Materials*, London: Butterworths

Vattimo G. (1974), *Il Soggetto e la Maschera – Nietzsche e il Problema della Liberazione*, Milano: Bompiani

Vattimo G. (1988) *The End of Modernity: Nihilism and Hermeneutics in Post-modern Culture*, trans. John R. Snyder. Cambridge: Polity Press.

Vattimo G. (1992) *The Transparent Society*, Johns Hopkins University Press.

Vattimo G. (1986), The End of (Hi)story, *Chicago Review* 30 (4): 20-30.

Viola P. (1994), *E' Legale Perche' lo Voglio Io. Attualita' della Rivoluzione Francese*, Roma – Bari: Laterza.

Warren M. (1985), Nietzsche and Political Philosophy (in Nietzschean Explorations) in *Political Theory*, Vol. 13, No. 2. (May, 1985), pp. 183-212; retrieved the 17/ Dicember/ 2005 in the World Wilde Web at the URL: http://links.jstor.org/sici?sici=0090-5917%28198505%2913%3A2%3C183%3ANAPP%3E2.0.CO%3B2-R

Wicks R. (2004), Friedrich Nietzsche, in *The Stanford Encyclopedia of Philosophy (Fall 2004 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2004/entries/nietzsche/>.

Wilson G. (1979), *Cases and Materials on Constitutional and Administrative Law*, Cambridge: Cambridge University Press.

Wittgenstein L. (2001), *Tractatus Logico-Philosophicus*, London: Routledge, 2001

Woodward A. (2002), Nihilism and the Postmodernism in Vattimo's Nietzsche, in ISSN 1393-614X *Minerva - An Internet Journal of Philosophy* Vol. 6 2002, retrieved in the world wide web at the address: http://www.ul.ie/~philos/vol6/index.html#ccc the 10/12/2005

Zajonc R. B. (1968). Attitudinal effects of mere exposure. *Journal of Personality and Social Psychology*, 9 (Monograph Suppl. No. 2, part 2).

Zappalà Salvatore (2007), *La Ricerca in Psicologia Sociale*, Roma: Carocci.

Zimbardo P. G. (1972), *The Stanford Prison Experiment*. A Slide – Tape Presentation produced by Zimbardo P. G., P.O. Box 4395, Stanford, Galif 94305.