

Book Review

**MILIJAN POPOVIĆ, TOMA ŽIVANOVIĆ
AS A LEGAL PHILOSOPHER (In Serbian),
Sremski Karlovci/Novi Sad 2003, 273 pp.
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Milijan Popović, professor emeritus of University of Novi Sad School of Law, is one of the most distinguished Serbian legal theorists and legal philosophers, from which fields he has written a number of books. For that reason this book, dedicated to principal questions of the legal philosophy of Toma Živanović (1884-1971), the first and most important Serbian legal philosopher to date, must arouse the interest of all those who care to study law more deeply, and who are able to read in the Serbian language. T. Živanović's opus in legal philosophy is very voluminous and complicated. The fundamental quality of Popović's book lies in the fact the main ideas of this opus have been faithfully presented to the reader, so that the book can be considered a fine introduction and preparation for the reader to master such an opus. Some drawback of Popović's book is, however, found in the fact it comprises a number of studies originally published on various occasions and in various periods – from 1978 to 2002, for which reason there is occasional repetition of points.

The book by Popović contains the following major parts: on the legal philosophy of Toma Živanović; Živanović's legal philosophy and philosophical and scientific method in law; Synthetic model of the general theory of law; Toma Živanović as a legal metaphysician; Živanović's legal philosophy and the substance of law; Živanović's legal philosophy and Marxism; Vračar's "Toma Živanović". The afterword was written by the recently deceased Belgrade University professor of legal theory, Stevan Vračar.

Toma Živanović's work in legal philosophy did not emerge in a single instance. It rather developed gradually, through the years. One should mention that he was also a competent theorist in criminal law, in which field he had a tenure at university.

Živanović completed his undergraduate studies in law with distinction at Belgrade University School of Law in 1905. He received his LL.D. in 1908, at the School of Law of the University of Paris, where he defended his thesis entitled: *Du principe de causalité efficiente et de son application en droit pénal*. His 1909 study in criminal law was also significant: *De l'élément subjectif ("moral") dans la notion du délit*, published in *Revue pénale suisse*, in which he introduced "tripartition" into the study of criminal law, as a "summa divisio" of the general part of criminal law: the criminal offense, the offender, the

penalty. As of 1909, he taught as assistant professor in criminal law at Belgrade University School of Law. His textbook *Fundamentals of Criminal Law (the General and Special Part)* was first printed in 1910-1911. At this school, he became an associate professor in the same course in 1914, and full professor in 1920. Soon afterwards, he became affiliated with the Serbian Academy of Sciences (1922 associate, 1926 member).

Živanović began to pursue legal philosophy during World War One. In the doctoral program of Paris School of Law he gave a lecture "Les problèmes fondamentaux du droit criminel" in the academic year 1916/1917, and held the course "Système de la Philosophie juridique synthétique" in 1917/1918. In 1921, Živanović published a short text, a prolegomenon to his system of "synthetic legal philosophy" in Serbian. The text came out in French in 1927: T. Givanovitch, *Système de philosophie juridique synthétique. Science de la philosophie juridique synthétique*. The peak of his efforts in legal philosophy emerged in his *System of Synthetic Legal Philosophy: 1. Synthetic Philosophy of Law; 2. Synthetic Philosophy of Legal Science*, Belgrade 1959, pp. XIX+939. In an abridged form, this work appeared in French, too: *Système de philosophie juridique synthétique: I: Science de la Philosophie du Droit; II: Philosophie synthétique du droit et des sciences juridiques*, Paris 1970, 516 pp.

Živanović was an exquisite systematizer and classifier. Actually, this was his strongest side. However, Popović certainly exaggerates the importance of systematization and classification, when he says: "The work of Toma Živanović looks impressive in this respect, too. Toma Živanović did what specialists in legal disciplines (special legal sciences) had failed to do in the previous centuries (sic!)" Yet, systematization and classification does not belong to general theory of law and legal philosophy, but to legal technique, topnotch legal technique indeed, but still nothing more than that, simply because they cannot reach the essence of problems. In this respect, F. Gény is right (*Science et technique en Droit privé positif*, III, Paris 1921, p. 184) when he calls this a "doctrinal constructive technique" (technique doctrinale constructive). Moreover, contemporary jurisprudence is right to hold on to traditional constructions, and not accept Živanović's innovations. Thus, his supreme division into "law of law" and "law of non-law" fails to consider that non-laws emerging from individual branches of law are so mutually different that even classifying them under one hypernym is an abuse of facts. How much does administrative non-law, for instance, correspond to the schema from criminal law – offender, offense, penalty? Almost not at all. In administrative non-law there is no offender, and penalty is replaced by enforced execution over persons and/or things.

Pretentiously, Živanović labels his legal philosophy "synthetic". Synthesis means that different, as a rule opposed, elements – thesis and antithesis - are put together, forming a new unity. There is no such novelty in Toma Živanović. As Popović shows, in the domain of general theory of law, Živanović supports the positivist school established by A. Comte. As a legal metaphysician, on the one hand, Živanović advocates a biologicistic natural law. On the other, he takes over Hegel's absolute idea of law, however without Hegel's dialectics. All these elements do not form any higher-order synthesis. Živanović's legal philosophy is hence eclectic. Indirectly, Popović admits this, too, when he says of this philosophy: "It is partly an original blend of the scraps (sic!) of many philosophemes..."

However, in one thing Živanović deserves to be seriously defended from Popović. A convinced Marxist, Popović complains that Živanović "fails to understand" Marx's philosophical thought, mostly so because he reduces Marxism to dialectic and historical ma-

terialism. Popović himself is a proponent of a "praxeological" Marxism, once especially cherished by the Yugoslav critical Marxists gathered around the journal "Praxis", which came out in Zagreb from 1964 to 1974. Having in mind the scope of the differences and acuteness of conflict among some Marxist schools and movements, one cannot blame Toma Živanović for taking as a model that Marxism which served as a state ideology of the superpower – USSR. Due to such internal relations within Marxism, one can find the best judgment of Marxism with competent non-Marxists, such as B. Russell, W. Sombart, H. Kelsen. Toma Živanović is also one of them.

Still, Živanović's eclecticism must not be underestimated, either. Živanović incorporated in his system every issue relevant to legal philosophy and general theory of law, from their beginnings to mid 20th century. For this reason precisely, his system is a obligatory literature for any reader in the Serbian language who wishes to delve more deeply into their problems.

Milan Petrović