

INTERPRETAZIONE GIURIDICA, ERMENEUTICA, NARRATIVITÀ, DIRITTO NATURALE. ANTÓNIO CASTANHEIRA NEVES RILEGGE RONALD DWORKIN

Giovanni Gritti*

Abstract. António Castanheira Neves is a Portuguese philosopher of law, an emeritus professor at the faculty of law at the University of Coimbra. He is one of the most significant personalities of the contemporary philosophy of law in Portugal. For many years, moreover, he was the only one, in whole country, who has taught philosophy of law, academic subject that was considered sometimes facultative, and other times alternative, according to plan of study.

In remarked opposition to legal positivism, natural law and all the theories that come under the name of judicial syllogism, Castanheira Neves is one of the most vibrant supporters of the so-called "legal interpretativism", a position, which is, in many ways, next to the legal hermeneutic, but with some specific and diriment connotations. As reported by Castanheira Neves "*the interpretation is interpretation as action*"; it "*is not mere activity or technical knowledge*". In this sense: "*the law – which is a lawyers' activity – is not merely interpretive or hermeneutic, but a practical 'agere', a practical normative*"; the law is "*a way for action*". The law always comes from legal problems, normative, concrete, practical and historically situated. Castanheira Neves writes that law doesn't distinguish itself by the fact. It is normative-material synthesis that has the fact as subject: "*the law is just a fusion that critically prepares and founds a methodic and problematic division between fact and law*".

It isn't hard to figure more than one affinity between António Castanheira Neves' philosophy of law and 'methodology', and Ronald Dworkin's theory, much more known and discussed, even in Italian literature. More than one author opposed him to that, and he, from his part, knows well. From here, Castanheira Neves felt the need of a review and a reconfiguration of Dworkin's theory, pointing out the differences and, from them, the heterogeneity of the starting points, leading Dworkin to the 'natural law', even if a different one, a far cry from the traditional one.

Castanheira Neves 'faces' Dworkin in one of his later essays, entitled *Dworkin e a interpretação jurídica*, published as appendix of his most important, and recent, work, *O actual problema metodológico da interpretação jurídica* (2003).

I'm going to develop my work in these main points:

* Università degli Studi di Napoli 'Federico II'.

- a. The interpretativism and the constructivism of Dworkin: coherence and integrity, the 'chain novel'. Dworkin and the Hermeneutic;
- b. Castanheira Neves' Dworkin. What 'law' means to Castanheira Neves. The critical spectrum prepared by Castanheira Neves, and, therefore, why Dworkin, in his opinion, can't be refereed neither to narrativism nor to Hermeneutic. Both of them are completely different from the 'legal methodology'. Castanheira Neves led back Dworkin, who is neither narrativist nor hermeneutic, to his 'natural law';
- c. The defendant 'natural law', and the one that Dworkin recognized in his own essay *Natural Law Revisited* (1982).