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Thon, August

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Introduction

August Christian Thon was a German professor of law whose research focused primarily on the relation between law in a subjective and objective sense. He was born on the 18th of February 1839. He came from a long-established Protestant family of civil servants: his father Gustav Thon (1805–1882) was the Duke's Minister of State from 1871 until his death. His mother was the Eisenach merchant's daughter Auguste Caroline Thon (born Bohr). Thon married the daughter of the law professor Johann Heinrich Gottlieb Luden. The marriage remained childless. From Easter 1857 on, he studied three semesters law in Heidelberg and one semester in Jena. After the mobilization in November 1859, he joined the military contingent and received the status of "Second-Leutnant" on the 15th of October 1859.

Thon completed his legal studies in Göttingen, where he received his doctorate on the 18th of August 1861 with the dissertation "*Exponatur de successione in locum creditoris pignoratitii secundum ius romanum*." In fall 1863, he was qualified as a university lecturer in Heidelberg with the study "*Das ius offerendi des besseren Pfandgläubigers nach Römischem Recht*". From the first of October 1866, Thon worked at the district court in Eisenach: first as an assessor, from the 20th of May 1871 as a judge, and from October 1871 on as a public prosecutor.

From spring 1873 to October 1879, Thon held a chair for Roman law at the University of Rostock, and afterwards a chair for criminal law in Jena, where he also served as a judge until the 1st of July 1893. Thon participated in the organizational management of the University in Jena: he served as dean of the law faculty for several periods and as president of the university for three semesters. Thon died in 1912 in Jena.

Because of these university duties and because of his activities as a judge, Thon's literary output was rather small: in addition to a few articles on procedural law, his editorship of the seventh and eighth editions of the "Handlexikon zu den Quellen des römischen Rechts" (Jena 1891 and 1895), founded by Hermann Gottlieb Heumann, is particularly noteworthy. Thon's main work is undoubtedly the study "Rechtsnorm und subjektives Recht - Untersuchungen zur allgemeinen Rechtslehre" (Weimar 1878). Thon later supplemented it with the two essays entitled "Das Gesetz im formellen und materiellen Sinn" (Archiv für öffentliches Recht, Vol. 4 [1890] pages 149–168) – a replica to a contribution of the same name by Albert Hänel – and "Der Normenadressat: Eine Untersuchung zur allgemeinen Rechtslehre" (Jhering's Jahrbücher

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für die Dogmatik des bürgerlichen Rechts, Vol. 50 [1906] 1–54).

The main work: ***Rechtsnorm und subjektives Recht - Untersuchungen zur allgemeinen Rechtslehre***

Thon dedicates his study to the "subjective law" and, above all, illuminates the moment in which objective law simultaneously becomes the entitlement of the individual. The works of Karl Binding (Die Norm und ihre Übertretung I 1872, II 1877), whose theses Thon attacks already in the preface, inspired the study. The same applies to the dogma of Jhering (Der Zweck im Recht 316 ff), according to which the essence of law is to be found in the coercive power exercised by the state over those subject to the law.

Thon follows Hegel's approach, according to which law in the objective sense should rather be regarded as the general will of the legal community. Under this premise, he analyses the structure of legal norms (1–70) and postulates: Each legal norm is to be regarded as an independent imperative, to the disregard of which legal consequences such as a penalty or the duty to compensate for the evil caused by the violation of the norm are frequently – but by no means necessarily – attached.

In the second part of the work (71–107), Thon expands on the fact that the legal consequence is not an essential feature of a legal norm by looking at the unblameable violations of norms by minors. He decisively opposes Binding's thesis that legal norms do not apply to minors and speaks of a partial elimination of the legal consequences linked to *dolus* and *culpa*.

In the third part of the work (108–144), one finds a meritorious, still stimulating examination of the demarcation between public and private legal norms: Thon first rejects the views that see the difference in a divergent origin of the norms (§ 1). A demarcation of public and private law cannot be made according to the norm addressees (§ 2); nor according to the interests whose protection the norms are intended to protect (§ 3). Rather, the distinguishing characteristic lies in the consequence that triggers the violation of the norm. The nature of the claim distinguishes between public and private law. Building on this, Thon fixes the concept of private law on the basis of the private entitlement.

The core of the work (147–287) aims to determine precisely this concept of private entitlements. It is noteworthy that Thon distinguishes this from the concept of the Roman-legal *actio* (248 ff). Nevertheless, Thon's understanding of the entitlement is still strongly procedural. He sees the entitlement as a means granted by the legal system to obtain legal assistance from official bodies - especially the courts (244). Therefore the private legal system should grant the individual the power to obtain a judgement, which Thon describes with the Latin word *condemnatio* (244).

The weak point of this view – as Helmut Coing (1959) quite rightly criticizes – is that Thon has not arrived at the heart of the concept of entitlement. This is particularly evident in the fact that Thon does not use the word "entitlement" in situations, where the defendant can raise a counterclaim (266–270).

On the Significant and Continuous Impact of Thon's Contribution

Despite his procedural approach, Thon made an important contribution to the understanding of entitlements in private law that is common today.

His merit is, on the one hand, that Thon – like his colleague Bernhard Windscheid before him – separates the Roman-legal concept of the *actio* from the entitlement. On the other hand, he placed – more precisely than many before him – the entitlement of the individual in relation to the whole legal system. Awareness of this problem deserves all the more recognition, as such questions had previously been examined primarily by scholars of public law, who paid too little attention to the specifics of private law. In this respect, Thon helped to redefine the relationship between public and civil law.

At the same time, however, Thon also followed the path taken by Georg Friedrich Puchta of alienating jurisprudence from the social, political, and moral reality of law. Moreover, the work – similar to the early works of Rudolf von Jhering – is based on a rather technical and positivistic

understanding, which becomes clear especially in the closer analysis of the individual private rights (147–222). Not least because of this, Jhering succeeded after his methodological reorientation in replacing the imperative theory established by Thon with his own interest theory. From then on, Thon's theory has lost approval.

Nevertheless, Thon's work has a lasting merit. They are rooted in the fact that Thon, as part of his investigation, critically examined the understanding of democracy at the time. His work certainly can be regarded as revolutionary in the sense of liberalism. Perhaps too little attention was paid to the aspect of the power of will conferred on each individual by the legal system, as pointed out by Bernhard Windscheid – on the basis of Kant's philosophy. It could probably have helped to see the entitlements in a more substantive sense. However, the fact that the theses about entitlements were regarded as outdated in the twentieth century is probably also due to Thon's understanding of law, which is in part strongly influenced by criminal law and which he sometimes transfers to private law theory. This is evident in the recurring statement: The entitlement always presupposes a violation of the norm, which cannot be true in contract law.

Cross-References

- ▶ Binding, Karl
- ▶ Hegel, Georg Wilhelm Friedrich
- ▶ Jhering, Rudolf von
- ▶ Georg Friedrich, Puchta

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