EDITOR'S PREFACE

1. The Five Theoretical Volumes

The present Treatise divides into a theoretical and a historical part. This preface introduces the theoretical part. The volumes of the historical part deserve a separate preface, which I will premise to the first of these volumes, the sixth of this Treatise: *A History of the Philosophy of Law from the Ancient Greeks to the Scholastics*, edited by Fred D. Miller, Jr., in association with Carrie-Ann Biondi Khan.

The five theoretical volumes are 1. Enrico Pattaro, *The Law and the Right: A Reappraisal of the Reality That Ought to Be*; 2. Hubert Rottleuthner, *Foundations of Law*; 3. Roger Shiner, *Legal Institutions and the Sources of Law*; 4. Aleksander Peczenik, Scientia Juris: *Legal Doctrine as Knowledge of Law and as a Source of Law*; and 5. Giovanni Sartor, *Legal Reasoning: A Cognitive Approach to the Law*. These volumes are theoretical by definition, in a stipulated sense of "theoretical" expressing the aforementioned division of the Treatise volumes into two classes, theoretical and historical.

In a second sense, the qualifier "theoretical" is conventional, rather than stipulated: It is rooted in the scholarly tradition that in continental Europe traces back to the German *allgemeine Rechtslehre*. This German expression should properly be rendered as "general doctrine of law," even though the term *Lehre* ("doctrine"), as it occurs in the expression, is often translated as "theory," and that even in the languages of civil-law countries, examples being *teoría, théorie,* and *teoria* in Castilian, French, and Italian respectively.[1] In any event, in this second, conventional sense, "theoretical" stands for "legal-theoretical" and applies properly to Volumes 3 through 5.

In a third sense we have "theoretical" as distinguished from "metatheoretical," this in the light of Alfred Tarski's (1901–1983)[2] use of the distinction between language and metalanguage (Tarski 1983).

With reference to the distinction between "theoretical" and "metatheoretical," and taking the two previous qualifications also into account, Volume 1 (which introduces the entire Treatise) can be said to be an intertwining of theory, metatheory, and history, and specifically a history of ideas; Volume 2 is

[1] But compare the Swedish *allmän rättslära*, which instead is literal to the German expression it translates, *allgemeine Rechtslehre*. On legal doctrine, legal theory, and related terms, see, in this Treatise, Peczenik, Volume 4, Chapters 1 and 2.

[2] Antonino Rotolo, in the Assistant Editor's Preface, which follows this preface, explains, among other things, the criteria used for indicating the dates of birth and death of the people mentioned in this volume as well as some of its other editorial aspects.

declaredly metatheoretical; Volume 3 is theoretical; Volume 4 is part-theoretical, part-metatheoretical; and Volume 5 is prevalently metatheoretical.

We can now give some substance to these distinctions. I will begin with Volumes 3 through 5, which I qualified as legal-theoretical (in the second of the three senses listed, the conventional sense).

Roger Shiner, in Chapter 1 of Volume 3, draws as follows the distinction between "strictly institutionalized sources of law" and "quasi-institutionalized sources of law":

> A law, or law-like rule, has a strictly institutionalized source just in case:
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> i) the existence conditions of the law, or law-like rule, are a function of the activities of a legal institution
>
> and
>
> ii) the contextually sufficient justification, or the systemic or local normative force, of the law, or law-like rule, derives entirely from the satisfaction of those existence conditions.
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> Clause (i) is intended to capture the idea of a "source" for a rule, and clause (ii) the force of the qualification "strictly." Two further comments are needed on this definition. The expression "law-like rule" is added to permit the possibility that certain forms of law less close to the paradigm of institutionalized sources of law might still qualify as strictly institutionalized sources of law. It might be thought controversial whether the decisions of such sources are "laws" in some strict sense. Also, the term "contextually sufficient" is taken from Aleksander Peczenik (1983, 1; 1989, 156–7). Peczenik defines a contextually sufficient justification as one "within the framework of legal reasoning, in other words, within the established legal tradition, or paradigm." "Deep" or "fundamental" justifications, by contrast, are those from outside the framework of legal reasoning, such as justifications by moral reasoning. For Peczenik, strictly institutionalized sources would be a sub-class of contextually sufficient justifications, but not the whole class (1989, 157). I am concerned, then, in this volume with that sub-class.
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> Other sub-classes would include the forms of justification considered in Volumes 4 and 5 of this Treatise, as "quasi-institutionalized sources of law." Consider, for example, coherentist justifications for legal claims. It might be that, within some jurisdiction, a legal claim is regarded as justified if in fact it is the one of competing claims, which coheres best with the existing body of justified claims within that jurisdiction. Neil MacCormick has argued for the validity of such coherence-based arguments within common law legal reasoning (MacCormick 1984, 46–7; 1978, 152–7, 233–40). Ronald Dworkin extended the idea to include coherence with principles whose postulation would make the legal system the best it could be (Dworkin 1986, 226ff.). Similarly, in most jurisdictions there are well-understood rules for the interpretation of statutes (Cross, Bell, and Engle 1995; MacCormick and Summers 1991). [...] Both coherence and interpretation are analyzed by Aleksander Peczenik in Volume 4 of this Treatise. Similarly, there are a variety of modes of legal reasoning and argumentation. A distinction can be drawn between cases decided by the content of a legal source "directly" and cases decided after supplementation of the content of the legal source by one or more acceptable forms of legal argumentation. The source may be said to be a "strictly institutionalized source of law" in the first case, but a "quasi-institutionalized source of law" in the latter case. The analysis of forms of legal argumentation is undertaken by Giovanni Sartor in Volume 5 of this Treatise [...].
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> We are not going to investigate the ultimate sources of legal validity itself, if that is taken to be an enquiry into what moral values, or what political forces, or what historical antecedents led to a particular law being a part of the system of which it is a law.[3]

[3] Shiner, Volume 3 of this Treatise, Chapter 1, 3–4. Cf. ibid., 7, 19, 32–3, 85–113, 115, 140–1, 145, 150, 158, 197–8, 210, 215, 217, 221–3, 227–9.

I borrowed this passage by Shiner because—on the basis of the distinction between "strictly institutionalized sources of law" and "quasi-institutionalized sources of law"—he sets out the legal-theoretical program of Volumes 3 through 5 at the same time as he indicates, on the other hand, and by exclusion, the areas consigned, in full or in part, to the investigation undertaken in Volumes 1 and 2.

In fact, there were three distinctions that from the outset served as guiding principles at the meetings held to set out the guidelines for the various drafts of the Treatise project: In the first place, there was the mentioned distinction between the "theoretical" and the "historical" volumes; in addition, there was at work, in the theoretical volumes, the distinction between "strictly institutionalized sources of law" and "quasi-institutionalized sources of law" and, in the historical volumes, the distinction between the philosophers' philosophy of law and the jurists' philosophy of law.[4]

Thus, the legal-theoretical Volumes 3, 4, and 5 were initially and provisionally entitled as follows: Volume 3 was *Strictly Institutionalised Sources of Law* and eventually became *Legal Institutions and the Sources of Law*; Volume 4 was *Quasi-Institutionalised Sources of Law I: Legal Dogmatics* and eventually became Scientia Juris: *Legal Doctrine as Knowledge of Law and as a Source of Law*; and Volume 5 was *Quasi-Institutionalised Sources of Law II: General Legal Theory, Logic, and Legal Computer Science as Auxiliary to Legal Dogmatics* and eventually became *Legal Reasoning: A Cognitive Approach to the Law*. Analogously, Volume 6, the first of the historical volumes, was initially and provisionally entitled *The Philosophers' Philosophy of Law from Greece to the Seventeenth Century* and eventually became *A History of the Philosophy of Law from the Ancient Greeks to the Scholastics*.

In Volumes 3 through 5 there is a fourplex idea involved, as I see the matter, in speaking of "strictly institutionalized sources of law" and "quasi-institutionalized sources of law": (*a*) In a broad sense, all of social reality and culture is an institutional reality (cf. Section 15.2.4 of this Volume 1); (*b*) law is part of the institutional reality, or rather, of cultural reality, as I prefer to say; (*c*) law and the sources of law need to be analytically distinguished, even though "sources of law" is not infrequently taken to mean "kinds of law" (cf. Section 3.5 of this volume); and (*d*) once the sources of law in the sense of "kinds of law" have been distinguished within the sphere of social, cultural, and institutional reality broadly understood,[5] they will need to be further dis-

[4] It was Norberto Bobbio (1909–2004) who made the distinction between the jurists' philosophy of law and the philosophers' philosophy of law (Bobbio 1965, 43ff.): He favoured the first of these two, in the sense that he judged it to be the task of professional philosophers of law to work with the jurists, and hence to be able to carry on with them a meaningful discourse.

[5] Cf. Sections 15.2 and 15.5 of this volume and Fassò 1953 (Guido Fassò, 1915–1974).

tinguished, or at least can be further distinguished to advantage, by applying to the expression "sources of law" the qualifiers "strictly institutionalised" and "quasi-institutionalised." The sense of this last distinction is that statutory law, customary law, and judge-made law, for example, are each a strictly institutionalised kind of law, however much they are so to different degrees and in different ways; in contrast, legal dogmatics, the general theory of law, and legal logic, for example, are each a quasi-institutionalised kind of law, however much they are so to different degrees and in different ways.

The distinctions just made came to bear when we started working on the Treatise. Of course, what counts as the outcome of this process, even in what concerns the distinction between "strictly institutionalised sources of law" and "quasi-institutionalised sources of law," is the outcome fixed in the theoretical volumes in their present form. So this is how the matter was finally worked out: Shiner, in Volume 3 (*Legal Institutions and the Sources of Law*), treats of legislation, precedent, custom, delegation, constitutions, international law, general principles, and authority, and does so with explicit reference to strictly institutionalised sources of law; Peczenik, in Volume 4 (Scientia Juris: *Legal Doctrine as Knowledge of Law and as a Source of Law*), with implicit reference to quasi-institutionalised sources of law, treats from different angles, and entering into several interrelated questions, of general and particular legal doctrine, legal theory, legal interpretation, coherence, defeasibility, and reflective equilibrium in legal doctrine, and also of metatheory and ontology in legal doctrine; and Sartor, in Volume 5 (*Legal Reasoning: A Cognitive Approach to the Law*), likewise with implicit reference to quasi-institutionalised sources of law, treats from different angles, and entering into several interrelated questions, of practical rationality, basic forms of reasoning, doxification of practical reasoning, normative beliefs, various kinds of rationalisation and rationality, multi-agent practical reasoning, collective intentionality, and legal bindingness: These topics he discusses in Part I of his magnum opus (the entire volume consisting of over eight hundred pages, for an overall twenty-nine chapters and 102 sections); in Part II he treats of legal logic, covering an entire spectrum of questions.

As we can gather from Shiner's previously quoted passage, Volumes 3 through 5 are not concerned with "deep or fundamental justifications"—the justifications found "outside the framework of legal reasoning"—or with "any enquiry into what moral values, or what political forces, or what historical antecedents led to a particular law being a part of the system of which it is a law." By exclusion, these questions are consigned, in full or in part, and along with other questions, to Volumes 1 and 2 of the Treatise (and of course to the historical volumes).

In Volume 2, Rottleuthner addresses from an explicitly metatheoretical angle the question of the foundations of law, and he distinguishes seven kinds of foundations: basic, fundamental concepts; basic research; logical and episte-

mological foundations; moral or legitimacy foundations; historical, genetic foundations of law; extralegal foundations of law; and preconditions for the efficacy of law. He further distinguishes the extralegal foundations of law (Chapter 3 of Volume 2) from the internal foundations of law (Chapter 4 of Volume 2). The extralegal foundations of law can be transcendent (mythological and religious foundations of law) or immanent (natural, economic, moral, societal, political, and historical foundations of law). Examples of internal foundations of law are found in the theories of Hans Kelsen (1881–1973), Niklas Luhmann (1927–1998), and Lon Fuller (1902–1978).

Rottleuthner criticises "mono-foundationalism" in application to law, such as happens in Karl Marx (1818–1883) and Friedrich Engels (1820–1895), and welcomes instead "multi-foundationalism": "a multi-variate approach of the kind that can be found," for example, in Max Weber (1864–1920) (Volume 2 of this Treatise, xi).

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I will turn now to the present Volume 1. Here, theory and metatheory, as well as the history of ideas, find themselves variously intertwined in a discourse devoted to unpacking the theme of the law and the right, and also in an effort to reappraise the reality that ought to be (the Ought, *das Sollen*, normativeness) from a monistic perspective.

This volume is divided into four parts: *Part One*, "The Reality That Ought to Be: Problems and Critical Issues" (Chapters 1 through 4); *Part Two*, "The Reality That Ought to Be: A Monistic Perspective. Norms as Beliefs and as Motives of Behaviour" (Chapters 5 through 7); *Part Three*, "Family Portraits. Law as Interference in the Motives of Behaviour" (Chapters 8 through 10); and *Part Four*, "In Search of Confirming Others" (Chapters 11 through 15).

In Chapter 1, I outline the Is-Ought dualism ("reality that is" versus "reality that ought to be"), a dualism proper to the tradition of legal thought in civil-law countries; and then I bring out (*i*) an underlying ambiguity that manifests itself in the use of "law" as an English equivalent for such terms as *derecho*, *diritto*, *droit*, and *Recht*, proper to the languages of civil-law countries, and (*ii*) the complex web of concepts that this ambiguity conceals. Further, the expressions "what is objectively right" and "what is subjectively right" are introduced and four senses of "right" and one of "wrong" are specified. Some of the questions dealt with in this chapter are taken up and developed in Section 2.2, Chapter 3, Section 5.1, Chapter 6, Section 10.2.4, Chapter 11, Section 12.2, and Chapters 13 and 14.

In Chapter 2 the concept of validity is introduced and connected with the distinction between types and tokens. Further, the idea of normative production (or normative causality) is taken into consideration and connected with the idea of the typicality of law. Some of the questions dealt with in this chap-

ter are taken up and developed in Chapter 3; Sections 5.2, 5.3, and 6.4; Chapter 7; and Sections 8.2, 9.6, 13.7, 13.8, and 15.2.3.

In Chapter 3 I take a dive into the sources of law, showing the parallelism between operative facts and sources of law in one sense of this expression. It is pointed out, further, that "sources of law" takes other meanings as well, notably "kinds of law" and "legal norms as Ought-effects in the reality that ought to be," between which there needs to be a clear distinction. Lastly, voluntaristic normativism is introduced and exemplified with reference to Grotius (1583–1645) and Kelsen, in which regard a continuity is underscored between the voluntaristic-normativistic conception of positive law occurring in natural-law theories (even in rationalistic ones) and the voluntaristic-normativistic conception of positive law occurring in German legal positivism. Some of the questions dealt with in this chapter are first mentioned or introduced in Chapters 1 and 2 and are taken up and developed in Sections 4.3 and 4.4, Chapter 7, and Section 9.6.

In Chapter 4, the first of the historical chapters in Volume 1, I discuss the matrix of normativeness as the ultimate source of what is right by virtue of human-posited norms: There come into play here some of the foundations that Rottleuthner treats more amply in Volume 2 and that Rotolo, in Chapter 7 of Volume 3, calls "sources of validity" in line with a long-established and venerable tradition. I also call the Koran into play in regard to the problem of the matrix; and Grotius and Kelsen are taken up anew; so, too, different classic conceptions of "nature" and the origin of the term *jus positivum* are considered. But what I am especially concerned to underline in this chapter is how the problem of the ultimate source of what is right, in all the manifestations of it described here, comes down to the problem of the authenticity of norms (Section 4.2): Cicero (106–43 B.C.) speaks of *vera lex*, and Augustine (354–430) and Aquinas (1225/1226–1274)[6] of the cases in which a *lex* is not a *lex sed legis corruptio* (it is not a norm but the forgery of a norm). And it is for this reason that I introduce (in Sections 4.1 through 4.3) the expression "matrix of normativeness." Some of the questions dealt with in Chapter 4 are first mentioned or introduced in Section 3.6 and are then taken up again in Sections 5.1, 13.7, and 15.5.

In Chapters 5 through 7 (Part Two) I present and flesh out my vision of the reality that ought to be, and do so from a monistic perspective: Norms are beliefs and motives of behaviour that acting subjects internalise in their brains and that become therein operative in different ways. I will not prefigure here in any summary fashion the contents of these chapters, and rather invite the reader to jump right in and work through them. Some of the questions dealt with in these chapters are first mentioned in Chapter 1, Section 2.1, and

[6] On Aquinas's date of birth—whether it is 1225 or 1226—see, in Volume 6 of this Treatise, Lisska, Section 12.1.

Chapter 3 and are then taken up again in Chapters 8, 9, and 10 and Sections 15.2.5, 15.3, and 15.4; the questions treated in Chapters 6 and 7 of this Part Two are also taken up again in the Appendix ("Elements for a Formalisation of the Theory of Norms Developed in This Volume").

Chapters 8 through 10 (Part Three) introduce my conception of law: realistic and normativistic but not normativistic in full. Indeed, Chapter 8 is entitled "No Law without Norms," and Chapters 9 and 10 follow through on this thought with the title "But Norms Are Not Enough" (Chapter 9) and "The Law in Force: An Ambiguous Intertwining of Normativeness and Organised Power" (Chapter 10). The same Chapter 8 begins by placing Hart 1961 (H. L. A. Hart, 1907–1993) on an ideal line that connects him to Axel Hägerström (1868–1939) and Karl Olivecrona (1897–1980), on grounds I hope will be deemed plausible. Further, there is criticised in this chapter the current concept of validity of norms (Hart's concept being a part of it), and it is argued that Hart, in his *Postscript*, presents us with an abjuration of normativeness in law (contrary to what he so excellently maintained in 1961), and that he does so to retain his staunchly defended distinction between law and morality, a distinction that staggers under the heavy blows dealt to it by Ronald Dworkin's critique. Some of the questions dealt with in Chapter 8 are first mentioned or introduced in Sections 2.2 and 5.1 and Chapters 6 and 7 and are then taken up again in Sections 9.1, 9.3, and 9.6 and Chapters 10 and 15.

In Chapter 9 some criticism is addressed to the analytical legal theory that reduces norms to propositions, or in any event to linguistic entities, and there is discussed at some length the relationship between language and the motives of behaviour; and it is also argued that language cannot bring out conative effects in an acting subject unless there concur, to this end, intra-psychical motives of action the agent has already internalised (whether these are inborn or acquired by internalisation from the social environment). Some of the questions dealt with in Chapter 9 are first mentioned or introduced in Chapter 2, Sections 3.5 and 3.6, and Chapters 5 through 8 and are then taken up again in Chapter 10 and Sections 11.3, 15.2.5, and 15.3.

In Chapter 10 I first expound Olivecrona's view of the role of force in law, a view I share with Olivecrona; I then introduce a different concept, the concept of "law in force," of which I provide my own characterisation, a characterisation intended to show the crucial importance both of the normative dimension and of organised power in the machinery of law. Some of the questions dealt with in Chapter 10 are first mentioned in Chapters 1 and 5 through 9 and are then taken up again in Sections 11.3, 15.3, and 15.5.

Chapters 11 through 15 (Part Four) are devoted to some of my confirming others.[7] Here, in Part Four, I will be especially concerned with bringing out

[7] "The image of self which a person already possesses and which he prizes leads him to

the essential traits of their thought. I do this in an extensive presentation that makes reference to the idea of the reality that ought to be, as this idea occurs in mythology and as I see it in the way that existentialism considers fate (Chapter 11), and to the idea of what is right, as this idea occurs in Homeric epic (Chapter 12), Aquinas (Chapter 13), and Kelsen (Chapter 14). Some of the questions dealt with in Chapter 11 are first mentioned in Chapter 1, Sections 5.3 and 6.3, Chapter 7, and Sections 9.6 and 10.2 and are then taken up again in Sections 12.2 and 15.2. Some of the questions dealt with in Chapter 12 are first mentioned in Chapters 1 and 6 and Sections 10.2.4 and 11.3 and are then taken up again in Chapters 13 and 14. Some of the questions dealt with in Chapter 13 are first mentioned in Chapter 1, Section 2.1, Chapter 4, and Section 12.2 and are then taken up again in Chapter 14 and Sections 15.2.2 and 15.5. Some of the questions dealt with in Chapter 14 are first mentioned in Chapter 1, Sections 3.6 and 12.2, and Chapter 13.

Chapter 15 closes the volume. Some of the questions dealt with in Chapter 15 are first mentioned in Sections 2.1, 4.3, and 4.4 and Chapters 5 through 11. I outline in this chapter my general conception of the relationship between nature (brute reality) and culture (social or institutional reality). In this chapter there are also identified, as confirming others in support of my conception of normativeness, (*i*) some contemporary scholars who study distributed artificial intelligence (DAI) and multi-agent systems (MAS)—most notably Rosaria Conte and Cristiano Castelfranchi—and (*ii*) some 20th-century sociopsychologists, most notably Hans Gerth (1908–1978) and Charles Wright Mills (1916–1962) and some of their predecessors. In this last connection, some important analogies are brought out between Gerth and Mills's concept of "generalised other" and the concept of "norm" as I understand this concept following in the wake of Hägerström, Olivecrona, and Hart 1961.

Finally, I identify in the same chapter a line of philosophical thought—an ontological and epistemological line stretching from Bertrand Russell (1872–1970) to Willard Van Orman Quine (1908–2000) and John Searle—to which I anchor my monistic and materialistic view of reality (including the reality that ought to be), a view that can be understood as non-reductionist nonetheless (despite being monistic and materialistic) in the sense that it accepts causal reductionism but rejects eliminative reductionism.[8] Also finding a rationale in

select and pay attention to those others who confirm this self-image, or who offer him a self-conception which is even more favorable and attractive than the one he possesses. [...] They treat him as he would like to be treated: they are confirming others" (Gerth and Mills 1961, 86–7; cf. Section 15.3.4). Of course, my use of "confirming others" in the title to Part Four of this volume, though it takes its cue from these two authors, makes no pretence to correspond to the technical or semi-technical use they make of the same expression.

[8] The sense in which my ontology is monistic and materialistic but not reductionist is that

the line stretching from Quine to Searle are some expectations I have in the regard to the neurosciences, and specifically in regard to the contributions the neurosciences will be able to make in enabling a satisfactory understanding of the psychological aspects of the internal dimension of human beings—of the dimension that Hart, in his account of normativeness, cautiously called "the internal point of view." Norms, as I characterise them in the course of the present volume, belong to this internal dimension of humans: They get internalised in their brains, or so I argue. For this reason I expect the neurosciences to contribute to clarifying normativeness, too.[9]

I know full well, for reasons having to do with statistics and biology, that when the neurosciences, in their progress, will verify or falsify this prediction of mine, I will have become dust again ("In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return"; Genesis 3:19), and that therefore I won't be able to plume myself on my prediction or have a change of heart. But I would still like to clearly state my expectation, so that those who will witness the developments in the neurosciences which I am referring to will be able to see with certainty (without having to enter into interpretation) whether I was right or wrong.

Nor does the fact that my expectations may well be forgotten by the time these developments come to hand strike me as a good reason not to express them.

2. The Background Leading up to the Treatise

There were three ideas I was turning over in my head just about midway through the 1980s, or rather three projects I wanted to see through. The first of these was an international journal of philosophy of law based in Italy but written in English, and fashioned after the model of the most authoritative scientific journals (as in chemistry and biology), that is, a journal having a selective access based on the method of blind refereeing. And as to the English, the rationale behind it was the service it can render as a lingua franca, "just as

it substantially welcomes materialism à la Searle, who criticises eliminative reductionism at the same time as he adopts causal reductionism (cf. Section 15.4).

[9] After all, criminology, criminal psychology, and neuropsychiatry have always concerned themselves, from a sociological, psychological, and neuropsychiatric perspective, with behaviour held in violation of norms. Of course this implies that these disciplines should also study behaviours in compliance with norms and what a norm's internalisation consists in. Those who believe, as I do, that much, if not all, of psychology is destined, in the progress of scientific knowledge, to be supplanted by the neurosciences will consequently believe that the neurosciences will in the future provide important contributions to our understanding of normative phenomena, individual as well as social, as conceived and presented in the course of this volume.

had been the case with Latin until about the mid-18th century," as I was wont to remind some learned and respected colleagues of mine who would frown upon English, with a leeriness motivated in part by a patriotism rooted in their erudition, and in part by an uneasiness with the "invasion" of American culture, deemed "barbaric." But the reminder I was making did not resonate very much with them. Nor did my reminder with regard to the "invasion": I pointed out to them that *Grecia capta ferum victorem cepit* ("Greece, the captive, made her savage victor captive"; Horace, 65–8 B.C., *Epistles*, II, 1, v. 156). At any rate, from this idea was born, in 1988, *Ratio Juris: An International Journal of Jurisprudence and Philosophy of Law*, Oxford, Blackwell Publishing.

The second idea was an interdisciplinary research centre in which the history, philosophy, and sociology of law and legal computer science—and artificial intelligence and law in particular—could all communicate and, whenever possible, interact. Here, the strongest objections and resistance came from respected jurist colleagues: "We don't need any artificial intelligence," was their slogan. "We can fare well enough with our natural intelligence." At any rate, from this idea was born, in 1986, CIRSFID, a University of Bologna Centre for Interdisciplinary Research in the History, Philosophy, and Sociology of Law and in Computer Science and Law.

The third idea was a multivolume treatise in legal philosophy and general jurisprudence. This third idea did not meet any particular objections, but it remained on the back burner nonetheless, because all of my time was taken up in the first place to overcome the resistance and objections to the first two ideas, and then to develop these ideas into operative projects and consolidate these last so as not to have the facts prove right those people who had countered the same projects, not only for the reasons mentioned a moment ago, but also because, in their estimation, the projects were impracticable.

This premise may well be overly autobiographical, but it effectively conveys the reason why my first and warmest thanks for this Treatise—which finally sees the light of day—goes to Carla Faralli, despite the fact that she has not occupied herself directly with the Treatise. Indeed, for some time now, in recent years, Carla has generously accepted to take my place as editor-in-chief of *Ratio Juris* and as director of CIRSFID,[10] and has done so improving on both, enabling me to devote myself amply to research, and with great freedom of movement, such as I have not been able to enjoy for a long time. Without

[10] Granted, these two tasks may bring a nuance of distinction. But then, in the rough-and-tumble of Italian academic life, they also guarantee a personal, non-transferrable, and huge expenditure of time and energy, at the same time as they also impose a daily and forcible sharing of living quarters with bureaucratic pseudo-problems that one would never expect to encounter—this is especially true in directing CIRSFID, as it is in directing any other university institution in Italy.

such freedom and time, the Treatise project would not have found its completion.

3. Acknowledgements

The first dedication goes to the Advisory Committee: to the late Norberto Bobbio, and to Ronald Dworkin, Lawrence M. Friedman, and Knud Haakonssen, who have honoured us with their faith and prestige. So, too, Gerald Postema and Peter Stein, a new friend and a longtime friend, have contributed with their expertise to enrich and set in the right balance such scholarship as this Treatise was looking for from the moment of its original framing.

My thanks go to all the volume authors and editors, without whose essential contributions, and without whose steady collaboration, there would clearly be no multivolume Treatise that we could present to an audience of students and scholars. I am fond of recalling that I first contacted Aleksander Peczenik (Volume 4), to whom I am tied by a relationship of esteem and fellowship—a relationship begun in Lund (Sweden), as both of us were in touch with Karl Olivecrona. Hubert Rottleuthner (Volume 2) is an English gentleman born and bred in Germany: clear-minded, transparent, and headstrong. Roger Shiner (Volume 3) came in with all his wisdom, sense of life, and humour in taking part in the teamwork required by the Treatise project. Giovanni Sartor is to me the correlative of what in Volume 5 he says I am to him: He is like a little brother who keeps making trouble, opening new horizons previously undisclosed to me, and he startles me with his ingenuity and ingeniousness.

There is also a special group I am indebted to: These are the people at CIRSFID and at the university of Bologna—some of them already mentioned—who at different times, and in different ways and measures, have contributed directly to the effort and intellectual work required by the Treatise. I will first group them in alphabetical order in this list I have drawn up (I have tried to make it exhaustive, but there are many people in this group, so I hope I have not left anyone out): Alberto Artosi, Claudia Cevenini, Giovanni Costa, Emilio Franco, Matteo Galletti, Fabio Lelli, Daniela Montuschi, Sergio Niger, Andrea Padovani, Monica Palmirani, Enrico Pelino, Pierluigi Perri, Bernardo Pieri, Andrea Marco Ricci, Enrico Ronchetti, Antonino Rotolo, Corrado Roversi, Giovanni Sartor, Guido Scorza, Ughetta Tona, Francesco Tura, Filippo Valente, Annalisa Verza, Silvia Vida, Giorgio Volpe. A specific thanks goes out individually to each of these persons.

Some of the contributions from these people are now integral to the Treatise. Thus, Andrea Padovani served as coeditor, with Peter Stein, of *The Jurists' Philosophy of Law from Rome to the Seventeenth Century*—the seventh volume of this Treatise and the second of the historical volumes—and as co-

author of it with the same Peter Stein and with Andrea Errera and Kenneth Pennington; and Alberto Artosi, Nino Rotolo, Giovanni Sartor, and Silvia Vida cowrote and contributed the appendix to Volume 1, "Elements for a Formalisation of the Theory of Norms Developed in this Volume"; Rotolo also contributed to Volume 3, by Roger Shiner, Chapter 7, "Sources of Law in the Civil Law."

I am further very grateful to Giorgio Volpe and the four Bolognan scholars just mentioned, because they gave of their time to discuss amply with me some of the contents of Volume 1, and in particular my conception of norms as beliefs and as motives of behaviour: I have received from them valuable insights and suggestions. Even when we ended our discussions maintaining different views, their accurate criticisms have made it so that I should hone my formulation of the ideas I was putting forward. Of course responsibility for any error or omission rests solely with me.

Also, Giorgio Volpe joined me, in the initial phases of the project, and kept contact with the authors and volume editors—an effortful task in which he was helped out as well by Annalisa Verza. The work these two persons were doing was then taken up by Nino Rotolo, who, in addition to that, served excellently in the role of assistant editor for all the Treatise volumes, theoretical and historical, and was responsible for preparing the bibliography of Volume 1. He coordinated a fine editorial team whose members were, each in a different role, Matteo Galletti, Fabio Lelli, Daniela Montuschi, Pierluigi Perri, Andrea Marco Ricci, Corrado Roversi, Francesco Tura, and Filippo Valente.

Corrado Roversi—the youngest of those who have found themselves working in the frontline—has proved to be nothing short of irreplaceable in the task entrusted to him as assistant editor of Volume 1: He had to integrate the work of different people, and to do so in a manner I could be satisfied with (and I admit I have a reputation for being quite fastidious). Filippo Valente got me to improve my English through my effort to keep his under control: He repaid me by producing for certain literary crotchets of mine, and certain idiomatic turns of phrase in which I like to indulge in Italian, effective English equivalents I had theretofore been innocent of.

Among many libraries, a special thanks goes to those at CIRSFID and at the Antonio Cicu Department of Legal Studies, of the University of Bologna, as well as to the Bologna Library of the Italian Dominican Province.

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