

PREFACE

If there is anything distinctive in my treatment of jurisprudence from Grotius to the “left-Kantianism” of Rawls and Habermas, it lies in the four following points:

1) I view the philosophy of law as a final outgrowth of a more general moral philosophy, and that moral philosophy (in turn) as an outgrowth of “first philosophy” (metaphysics, epistemology, theology)—so that “legal ideas” will not be mere *disjecta membra*, arbitrarily thrown up, but will instead be true elements of a *corpus*. (Hence in the cases of Hobbes or Leibniz or Kant I begin with what is most general and fundamental, and move toward “philosophy of law” as something more particular, and as generated by the general and fundamental.)

2) Throughout my volume of *A Treatise of Legal Philosophy and General Jurisprudence* I give great prominence to the *jurisprudentia* of Leibniz (1646–1716)—the greatest German philosopher before Kant. While Leibniz is best known as a mathematician (the co-discoverer of calculus), as a mathematical logician, and as a theologian (the author of *Theodicee*, *theos-dike*, “the justice of God”), he was in fact by profession a “jurisconsult” who served as “intimate counsellor of justice” to the King of Prussia in Berlin, the Emperor in Vienna, and Peter the Great in Petersburg—after having earned a doctorate in jurisprudence at the age of nineteen. Leibniz combines philosophical and jurisprudential greatness in a way achieved by no other: He “demonstrated” what Grotius had only Platonizingly asserted (*etiamsi daremus*); he offered the most intelligent criticisms of Hobbes and Locke; he raised the most lingering doubts about Pufendorf and Christian Thomasius; he made possible much of the later thought of Wolff and Kant. Since Leibniz has never been rendered his jurisprudential “due” in English, the present volume offers an occasion for that rectification.

3) Throughout my volume I also give great prominence to the thought of Leibniz’ friend and correspondent Malebranche (1638–1715)—the greatest French philosopher between Descartes and Rousseau. Without Malebranche’s notion that universe is governed by general laws (*les lois générales*) produced by the “general wills” (*les volontés générales*) of God, the jurisprudence of Montesquieu and of Rousseau would not exist—since the philosophical foundations of the thought of those later masters were (more than anything else) Malebranchian. And Malebranche’s thought also furnished an occasion for the great sceptic David Hume.

4) But the scepticism of Hume slightly chastened the Platonic rationalism which Kant inherited from Leibniz, and led Kant to say that we merely “take”

ourselves to be “objective ends,” indeed members of a Kingdom of Ends resting on universal and equal respect; and a left-leaning version of Kantian “moral teleology” then led to the early left-Kantianism of the young Marx, and ultimately to the liberal-Kantian jurisprudence of John Rawls and Jürgen Habermas—both of whom try to detach Kantian practical conclusions from their “background” in transcendental idealism (in a way somewhat differently attempted by Hannah Arendt and Jean-Paul Sartre). Throughout my volume I give prominence to Kantianism—not just because of its influence on (early) Marx, Rawls and Habermas, but because the central Kantian practical notions (moral egalitarianism, universal republicanism, infinite movement “toward” eternal peace) seem to be the best moral-legal principles for a contemporary, non-theocratic, non-utilitarian world.

Before concluding this *Preface*, three additional matters need to be briefly commented on:

(A) Though *The Philosophers' Philosophy of Law* begins mainly with the “17th century,” I nonetheless offer a “Prologue on Machiavelli” (died 1527). This is simply because certain later figures are hard to make intelligible without a knowledge of “Machiavelism”—above all Hobbes, Leibniz, Rousseau, Hegel, and Nietzsche. (Hegel, for example, takes the view that Machiavelli’s historical “realism” is the antidote to Platonic transcendental flight to an imaginary “Beyond.”) Since modern legal philosophy can never be wholly separated from political thought, a brief chapter on the great Florentine is fully warranted.

(B) When I use the terms “Platonic demonstration” or “Platonizing demonstration” in connection with Leibniz, Malebranche, Kant, and others, I mean not syllogistic logic in the manner of Aristotle’s *Posterior Analytics*, but simply Plato’s tendency to say—in *Meno*, *Phaedo*, *Euthyphro*, *Republic*, and *Theaetetus*—that problematical and contested moral ideas such as “justice” and “virtue” are conceptually like geometry and mathematics: rational, necessary, universal, eternal, God-loved, free of Heraclitean flux (and therefore not made in time by arbitrary “public decision”; Plato, *Theaetetus*, 172b). Since Platonic “geometrizing” rationalism turns up in figures as unlikely as Montesquieu and Hume—in the first case favourably, and in the second not—that version of rationalism forms a thread leading from Leibniz and Malebranche to Kant, and gives an ongoing vertebrate structure to a substantial part of modern jurisprudence.

And (C) I treat some “philosophers of law” who are not philosophers in a broader sense (concerned with metaphysics, ontology, epistemology), but who cannot be omitted because certain far greater “real” philosophers then become intelligible: Leibniz for example, cannot be understood without his opposition to Pufendorf’s “voluntarism,” without his reverence for “the incomparable Grotius”—thought Pufendorf and Grotius are not “philosophers” in a full, broader sense. Indeed my volume should be seen as a *continuum* in

which some figures are philosophers first and “lawyers” second (Leibniz, Malebranche, Kant, Hegel, Nietzsche) and some others are principally lawyers and only secondarily philosophers (Pufendorf, Grotius, Thomasius, Montesquieu). But an over-strict and over-narrow definition of philosophy would simply exclude too much: Here I follow the wise practice of Guido Fassò, who views “philosophy” in a helpfully latitudinarian way.

I dedicate this volume to my three teachers who taught me most about jurisprudence as an outgrowth of moral philosophy: Michael Oakeshott, Judith Shklar and John Rawls. And I dedicate this book, above all, to the person who has (for forty years) made all of my intellectual work possible: my wife, Joan Zoccola Riley—the “why and wherefore” of my life.

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