

Preface

It is one of the peculiarities of legal science that the question as to its subject is (quite heavily) disputed among scholars, “a situation”, as HLA Hart famously remarked, “not paralleled in any other subject systematically studied as a separate academic discipline”. And yet, for the longest time (or so it seems), at least it was considered common ground that legal norms are essentially determined by their force: while it was Thomas Hobbes who most famously pointed out that “the bonds of words are too weak to bridle men’s ambition, avarice, anger, and other Passions, without the fear of some coercive Power”, the force of law was considered a necessary element of legality not only among contractualist political thinkers such as Hobbes, Spinoza and Locke. Following Jeremy Bentham, John Austin defined law as a “command backed by threats” and thus placed force right at the very core of the definition of the subject, a definition later echoed by Hans Kelsen’s and Max Weber’s general depictions of legal systems.

It was Hart who raised doubts about the existence of a necessary connection of law and coercion, by referring to the empowering, or more generally: enabling character exhibited by some legal norms. Following and refining Hart’s argument, scholars like Scott Shapiro have started to build a case to exclude coercion from the essential properties of a general concept of law. Frederick Schauer, however, in his latest book, *The Force of Law*, made a powerful case to reclaim force, even if not essential to the very concept of law, as essential to our understanding of the phenomenon, arguing that “the fact that coercion is not all of law, nor definitional of law, is not to say that it is none of law or an unimportant part of law”.

It was to be expected, his claims would be approved as well as opposed. Thus, a workshop within the framework of the XXVII World Congress of the International Association for the Philosophy of Law and Social Philosophy in Washington D.C., in July 2015, was dedicated to the topic, to give author and critics a chance to meet.

By giving an account of the proceedings of this workshop, this volume (which includes two additional essays) puts the resilience of Schauer’s arguments to the test. It provides a platform for academics from different legal traditions to address the relation of law and force from distinct perspectives and for Schauer himself to

reply to their arguments, trying to contribute to the effort of determining whether and to which extent law and force are related.

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We are indebted to the authors for their fascinating and insightful contributions to this volume, in particular to Lars Vinx who from the very outset helped to shape the idea for the workshop, and we hope that this book may serve as a useful addition to the discussion on the characteristics of this much-disputed subject of jurisprudence.

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