Symposium on Scientia Iuris: A Reply

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Abstract

In this reply, I express my gratitude to Amicus Curiae for hosting a symposium on my new book—Scientia Iuris: Knowledge and Experience in Legal Education and Practice from the Late Roman Republic to Artificial Intelligence (Springer, 2024)—as well as to the symposium's guest authors for their insightful contributions. In so doing, I also engage with their comments on my analysis and argument.

Keywords: *scientia iuris*; knowledge; experience; legal education; legal practice.

[P]iù si impone l'automatismo, più siamo obbligati a non essere noi automatici e a sviluppare la coscienza accanto alla conoscenza¹

[A] INTRODUCTION

I sincerely thank *Amicus Curiae* for hosting this book symposium on my new monograph and all the guest authors—Geoffrey Samuel, Robert Herian and Joshua Neoh—for taking the time to read it and for writing such compelling essays on it. Their contributions have grasped, each in its own way, the main thrust and nuances of my analysis and argument perfectly. I have learned a lot from their insightful appraisal of and critical engagement with my findings and claims. What I have found particularly helpful is that each essay has prompted me to reflect anew on several substantive and methodological aspects of my book in a manner that will greatly enrich my future research on the philosophy of legal education and practice in comparative perspective—for this, I am grateful to them all.

Writing this book has proven to be a rather strenuous endeavour both professionally and personally. Thus, in putting together this reply, I find

¹ Bodei (2023: 329). In English: "The more automation takes hold, the more we are required to not be automated beings ourselves and to nourish our consciousness alongside our knowledge." My translation.

myself sharing for all the contributors to this symposium the feelings of appreciation that Goethe voiced in a key passage of his *Italienische Reise* when, looking backward to the journey he had made up that point, forward to what might await him, and inward to how his experience had affected his spirit, he paid tribute "to all [those] who, directly or indirectly, help, encourage and sustain me" (Goethe 1970: 389).

I opened the book with a few quotes from ancient to more recent times that well encapsulate the phenomenon I have attempted to uncover and contextualize. If I was to add one more here for the purposes of this reply, it would be Honorius of Autun's that "De hoc exilio ad patriam via est scientia" (De Animae Exilio, PL172: 1243B, cited in Le Goff 2008: 59). Honorius' remark points to one of the Western tradition's existential canons—namely, that intellectual and spiritual flourishing requires and is inseparable from the pursuit and attainment of knowledge. In Scientia Iuris, I drew from Emanuele Severino, the greatest Italian philosopher of the 20th and early 21st centuries, to show that the philosophical spark of this existential sentiment can be traced back to the Promethean myth as narrated by Aeschylus. In so doing, I also argued that inspiring and proper though it is, this "discendi cupiditas", as Cicero labelled it in pages that proved crucial for the history of the Western tradition's fascination with epistemic quests,² hides a peril of the first order that ought to be uncovered and confronted. For, to say it with Petrarch and Boethius, while the epistemic "striving for truth"³ against "the dark cloud of error"⁴ is certainly a most noble endeavour, it is experience, not knowledge, that defines who we are as individuals, namely what makes "each individual in his unique distinctness" (Arendt 2008: 207) who they are as opposed to someone else. Experience exerts an individualizing function because experiences are immanent, subjective and unique. This is so despite experience being somehow affected by "abstract [ie universal] ideas, such as that of cause and effect", as Karl Popper reminds us (2002: 258). "[M]y experience", writes Iris Murdoch in her masterpiece, Metaphysics as a Guide to Morals, "is private to me and cannot be experienced by another ... in the sense that there is (it seems) nothing which we would call me having your perceptions" (1992: 349, emphasis added). It is this principium individuationis, I argued in the book on philosophical grounds, that makes experience always given and primary, that is, ontologically

² *de Finibus Bonorum et Malorum*, V 50. On the legacy of Cicero's words, see Bonazzi (2023: 14ff).

³ Petrarch (1956: 34). Titled in English as "Self-portrait", Petrarch's letter to Francesco Bruni is the number VI of the Seniles Collection. The original passage reads: "[N]on sono seguace di nessuna setta, ma della verità avidissimo."

⁴ De consolatione philosophiae, III.XI.7 ("texit erroris nubes"). My translation.

irreducible to anything else (cf Tagliapietra 2017: 16). Moreover, and relatedly, in experience's individualizing properties there lies its existentially *traumatic*⁵ value.

Conversely, knowledge is but information—that is, a metaphysical, truthindependent⁶ and sharable (ie non-rivalrous) end-result of intellectual processes of ontological abstraction that transcend experience's facticity and finiteness. Pursuing knowledge alone at the expense of experience makes the individual that every one of us is redundant and replaceable.⁷ Appreciating why that is the case is of the essence if we are to understand why, *qua* a regulatory phenomenon, law is thriving, whilst legal education and practice are undergoing a crisis. For, if all that law needs to perform its regulatory tasks is knowledge alone, then the experiential contribution of legal professionals becomes obsolete. Nor is there any need for (legal) education's individualizing (ie other-regarding) ethos. All that is needed is a form of education that focuses on bare, constructivist learning—and, say, either let do the job by one-right answer problem-solving assessments, or computational, algorithm-based modes of legal reasoning and argument (as is gradually being done).

Unfortunately, since their inception in the late Roman republic, the study, teaching and practice of law have always been a matter of knowledge rather than experience. As I explain in the book, this epistemic fascination has to do with law's nature and operations as an intellectual artifact to be used for ordering purposes. As such, it may simply be inevitable. However, be that as it may, I believe that we are still required to understand why that is so and what the repercussions might be for the future of legal education, practice and societal interaction more generally. Taking up this challenge, the conclusion I have come to is that, as paradoxical as it may sound, it is precisely the favouring of knowledge over experience which has been characterizing Western legal consciousness since its origins that enables law to exert its regulatory function without the aid of legal

⁵ A term I employ in its etymological sense to point to experience's ontological sublimity and marvellous (*thaumastón*) potency. Cf *Metaphysics*, 982^b14, 983^a14. In secondary literature, see Severino (1989: 349ff).

⁶ I am not affirming that truth does not exist. I am saying that it differs from knowledge, the two occupying two different analytical planes entirely. I elaborate on this point at length in the book.

⁷ And, I would also dare to note, perhaps not even replaceable and merely *disposable* in a not too distant future, for current technological advancements suggest that humans in their experiential specificity might one day become, in the words of Marx, "unsaleable, like paper money thrown out of currency by legal enactment" (2004: 557). For a recent example in education, see Carroll (2024).

The most profound and eye-opening critical appraisal of the anthropological, ethical, and sociopolitical repercussions of current and future technological developments I know of is that of Bodei, who also draws from and contextualizes philosophically Marx's statement (2023: 284ff). I return to this theme below.

experts. To draw from Plato and put it somewhat more philosophically, the knowledge-oriented categorization of legal education and practice I have set forth in *Scientia Iuris* is the very cause ("*tên tou pantos arkhên*")⁸ of the existential crisis which they both are undergoing.

[B] SAMUEL

The essay opening the symposium, by Geoffrey Samuel, is titled "Can Historical Jurisprudence Inform the Artificial Intelligence and Law Debate?" It is for me a great honour that Samuel has read the book and decided to engage with it. I was first introduced to Samuel's work while I was an undergraduate student at Turin, and it has played a crucial role in my intellectual development since. Samuel is a leading legal comparatist and epistemologist whose decades-long scholarship has made fundamental contributions to the nature and dynamics of legal reasoning in both common and civil law jurisdictions. Students, scholars and practitioners alike have significantly benefited (and will no doubt continue to benefit) from Samuel's deep acquaintance with the subtleties of both traditions and their respective legal languages and mentalities. His insightful discussion of Scientia Iuris is no exception. It has given me the invaluable opportunity to critically reflect on my claims and on how I have tried to support them from new perspectives of inquiry that I will explore in my future research on the book's topics.

Starting from the very end of Samuel's essay, I agree with him that the lack of an index is to be regretted. Especially in a book as long and complex as *Scientia Iuris*, an index would not only have proved a helpful navigational tool for readers; it would, *qua* "an antidote to 'antifactuality", as Samuel defines it, have helped to sensibilize law teachers and professionals to experience's existential value. As with any other oversight that might affect the book's readability, I take responsibility for it and will do my best to convince the publisher to include an index should the opportunity to do a new/revised edition present itself in the future.

As to Samuel's take on the book's argument and methodology of enquiry, I am delighted by his generally positive assessment. In addition, and relatedly, the interrogatives he raises regarding the implications of some of my claims are very much on point. For as I mentioned to him when he spoke at the book launch in Cardiff earlier in the year, Samuel is no doubt right to ask where my criticism of law's fixation with knowledge and reason might eventually lead to. When thinking about this question, the only answer I have to offer, at least for now, is that I see no alternative

⁸ As to why Plato's phrase fits my argument, see Berti's analysis of it (2008: 52).

to the epistemic universe I describe in the book. For law is a product of the intellect. As such, its experience cannot but take place within its very "epistemological foundation" (Kelley 1990: 9; cited in *Scientia Iuris*, Siliquini-Cinelli 2024a: 60; see also Siliquini-Cinelli 2024b).

In this sense, I share Samuel's perceptive concern about a law-world geared too much—if not solely—towards experience.⁹ Accordingly, my main aim in Scientia Iuris is neither to place existence over thought, à la Feuerbach; nor to advocate an existentially passive (ie merely naturalistic and biological) mode of living in line with or comparable to, say, the unrealistic Pulcinella-like form-of-life advocated by Giorgio Agamben; nor, finally, is my aim to envisage a sort of Heideggerian poetic dwelling, which as Adorno (2016) showed perhaps better than others, is utopic to say the least, and whose inaccurate premises I tried to expose in the book. Rather, my main aims are, first, to alert readers to what distinguishes experience from knowledge-two terms which are employed superficially and interchangeably not only in legal literature but also, in the classroom and courtroom; secondly, to elucidate why and how we have got to the unfortunate point we find ourselves trapped into-a point in which law schools and the legal professions are undergoing a severe crisis despite law having significantly expanded and intensified its regulatory reach; thirdly, to suggest that, if in all its declensions (ie legislative, judicial, executive) law were to become sensitive to experience's existential value, that would enrich both its pedagogical and professional dimensions (as Samuel acutely notes, my critique of the common law tradition's mind-set and self-legitimating narrative ought to be read in this light). My future work on legal education and practice will continue to pursue these aims, and I thank Samuel for sharing his precious insights and suggestionsthey have widened my scholarly horizon and will greatly benefit my research on scientia iuris.

[C] HERIAN

In his essay, "The (In)efficiency and (Un)certainty of Non-propositional Structures of Reality ... or, Adventures in Philosophy of Understanding", Robert Herian takes the first steps towards a philosophy of "understanding" in legal education. Herian is kind enough to say that reading *Scientia Iuris* helped him identify the scholarly gap he aims to tackle. I am deeply grateful to Herian for this very generous remark as I profoundly admire his thought and work. Herian is no doubt right to say that "understanding" is a much-

⁹ Samuel refers to Felix S Cohen in this passage of his essay. As Cohen is also mentioned by Neoh in his contribution, I share some brief remarks on American legal realism below.

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neglected topic in legal education scholarship. That is unfortunate to say the least, for law teachers are, ultimately, educators. In *Scientia Iuris* I argue that law teachers have overlooked what distinguishes knowledge from experience. The fact that, as Herian notes, it is also generally overlooked that what it means for students *to understand* what they are being taught is indicative of how serious and profound the malaise affecting legal education is. As I mentioned to Herian when he spoke at the launch of my book in Cardiff, his timely call for more pedagogical awareness in legal education made me think of a statement which had been added to the module descriptors at an institution I worked at. The purpose of the statement was to alert students to the consideration that there was nothing that the teaching team could do to *make* them learn their subjects—that is, the statement would set the students' expectations right as to what could be pedagogically provided to them and why.

Now, being clear about what students may expect from a teaching team (as well from the module they are taking more generally) is of the essence, for it helps to establish a healthy professional relationship between the two. In so doing, it also ensures that students are provided with a high-quality teaching and learning experience. However, as regard to statements such as the one above, one may reasonably wonder whether their inclusion and implementation have, instead, the opposite effect and negatively affect the students' learning experience. For, effectively, they turn law into something akin to Aristotle's first principles-that is to say, into something which the learner ought to be intellectually able to grasp on her own, for nothing can be done to make her understand it. Yet, learning is never a merely subjective phenomenon. It always includes, and is defined by, a relational dynamic between teacher and learner. Accordingly, our pedagogical duty as educators goes beyond the bare teaching of notions, principles, rules, and the like. It involves trying to make our students appreciate the relevance of what they are required to know and get them excited about it while also helping them to develop critical thought as well as self- and social awareness (critical pedagogy). Stripped of this pedagogical (ie experiential, individualizing, empowering and responsibilizing) function, teaching would be best left to self-study (as, regrettably, already is the case in some key jurisdictions). The value of Herian's perceptive contribution is, therefore, that it reminds us that, to be truly meaningful, the teaching and learning experience *must* include a critical and self-reflective appraisal of what understanding is and entails. This is particularly the case, I suggest, if we conceive of the attainment of knowledge as a dynamic and multifaced "problem space" (Lury 2020), to

use Celia Lury's terminology, that is influenced by the very methodology we employ to (try to) make sense of it and solve it.

The latter remark leads me to what I would like to be one of the main takeaways of Scientia Iuris-namely, that the challenge which law teachers face could not be more urgent and serious. For we live in an age in which human flourishing, progress, self-dignity and self-responsibility are increasingly being inhibited and put at risk by reductionist (ie causal, materialist etc) mind-sets and practices, declining moral and ethical standards, and dystopian technological developments. Among the latter, there stands the ability of artificial intelligence (AI) to decouple agency from intelligence (Floridi 2023) which, according to some, will inevitably lead to a flattening of intellectual capabilities (see eg Baker 2015; cf Wooldridge 2020: 274ff), if not "personalities" (Kissinger 2015: 353), and thus, of the complexity and ingenuity informing and shaping societal interaction and advancement.¹⁰ Should that be the case, one might say that the "soot" Seneca warned the human mind against might in fact take hold in a not too distant future.¹¹ As with much else, the history of philosophical thought reveals that philosophers have been sensitive to this peril for longer and better than others. Consider, for instance, that, while being generally critical of humans' thoughtlessness, Heraclitus believed the human spirit (ie soul, lógos, psūkhḗ) to be capable, eventually, of discovering the truth (see eg DK 22B116, B114, B1, B2, B49, B50). Yet, fast-forward two-and-a-half millennia, and this enlightening aspiration has been replaced by much grimmer portrayals of the human nature. "The [human] spirit", Karl Jaspers famously wrote in The Origin and Goal of History commenting on modern technology's hold on human life, "is [now] being reduced to the learning of facts and training for utilitarian

¹⁰ The main philosophical references here are to Aristotle's view that, deprived of their intelligence, humans are but beasts (*Protrepticus*, fr 28), and to such Averroesian, Spinozaean and Marxian notions as the general intellect and knowledge. For the key point of AI technology is that it makes any AI user just as competent and capable as any other: see Massimo Cacciari's remarks on the late Remo Bodei's last work on the subject, cited above. Cf the remarks Severino made in an interview he gave to il *Corriere della Sera*, on 4 October 1992, reprinted in Severino (2022: 212ff). On Spinoza, see Lenoir (2023: 57).

¹¹ De brevitate vitae, 3.1: "humanarum mentium caliginem". My translation.

functions" (2021: 111).¹² Jaspers' lament ought to be taken seriously for the simple reason that, as philosophical thinking has made it clear since its dawn on Ionian shores, epistemology (ie what we know, why and how) is, ultimately, a matter of ethics (see *Scientia Iuris*, Siliquini-Cinelli 2024a: 3–4, 53–54, for some references; see also Severino 2010: 21ff; for a present-day declension of this view, see Popper 2012: 47, 58–60, 71– 72, 121). Taking what I have argued in the book regarding the incursion of technology into the legal education and services fields one step farther, here I should like to add that the day will soon come, I fear, in which there will not even be the need for such basic tasks.

[D] NEOH

In his thought-provoking contribution, "Law without Lawyers, Lawyers without Law", Joshua Neoh sets my analysis and argument against those of the American legal realists—particularly, Felix S Cohen's. Neoh's approach is all the more appropriate, for in the book I also argue that despite what is commonly and too easily claimed by those who lament the death of law at the hands of new technological forms of regulation and management, what is currently taking place is not the crisis of law as a regulatory phenomenon;¹³ it is, rather, the crisis of law's juridical component and its teaching and learning. The reason for this, as already mentioned, is that *qua* a product of the intellect, law is a matter of knowledge (ie information), not experience. This, in turn, makes the experiential contribution of legal experts redundant. Accordingly, there is no doubt that ultimately, as Neoh puts it, if I am wrong in saying that legal education and practice are a matter of knowledge rather than experience, then Oliver Wendell Holmes Jr must be right (and *vice versa*).

¹² Assuming that the high-speed tempo of our lives still allows for it, supporters of the technological revolution the world is witnessing would do well in taking a moment and read Eugen Diesel's *Das Phänomen der Technik*, first published in 1939, where it is explained why and how machines can replace not just the operations of the human body, but those of the human mind, too (1944: 62ff, 85ff). To this, one should add the reading of Albert Speer's concluding statement of his account of Nazi Germany and of the pivotal role he played in the atrocities it perpetrated. Speer, who described himself as "the top representative of a technocracy which had without compunction used all its knowhow in an assault of humanity", labelled "nightmare" his realization "that some day the nations of the world may be dominated by technology". He then affirmed that "the more technological the world becomes, the more essential will be the demand for individual freedom and the self-awareness of the individual being as a counterpoise to technology". His conclusions could not be clearer and more worrying: "The danger of the automatism of progress will depersonalize man further and withdraw more and more of his self-responsibility" (2003: 692, 694, 698). See also this essay's opening quote, by Bodei.

¹³ Ours is, and will continue to be, a *societas iuris*—ie to say it with Solon and Hobbes, law will continue to exert its "force" undisturbed (*"kratei nomou*", fr 24), and we will continue to walk on the path delimited by its "hedges" (*Leviathan*, ch XXX).

To be sure, in the book I acknowledge that as in any human endeavour, experience does play an important role in the teaching, study and practising of law (see eg Siliquini-Cinelli 2024a: the beginning of chapter 2). Yet, as Neoh correctly notes, I am also of the view that law being an intellectual artifact, at some point experience is replaced by knowledge. This is the reason why, as I tried to show in *Scientia Iuris*, similarly to what occurs in metaphysical thinking,¹⁴ in law the epistemological and the ontological systematically overlap and mutually inform each other.

Neoh's perceptive discussion and use of Felix S Cohen's work has prompted me to think of some remarks made by Cohen's father, the legal philosopher Morris R Cohen. In a fundamental work first published in 1933, which has regrettably not received the attention it deserves, *Law and the Social Order*, Morris R Cohen made a powerful plea to not abandon the world of law—nor, indeed, ourselves *qua* intellectual beings—to the realm of experience alone. As he puts it, "personal experience is obviously not an adequate basis on which to decide the policies of the law" (Cohen 1967: 194–195). For, he continues, "law, like other institutions and civilizations, is organized to advance the good of life, and what distinguishes that is not to be attained by abandoning our intelligence" (ibid 195).

Morris R Cohen's argument for what may be safely called a jurisprudential form of "empirical rationalism" (see eg ibid part 3) seems to apply well to Neoh's views about what law is and how it operates as they transpire from his comments on my book-especially when he notes that both Holmes and I might, in the end, be "half right" (so that law would neither be a matter of knowledge, nor of experience, alone, but of both). I therefore wish to thank Neoh for contextualizing my thought through the prism of American legal realism-a fundamental intellectual movement which, due to space constraints, I could not discuss in the book. In this sense, Neoh's accurate analysis of and critical engagement with my findings and views provide a valuable perspective of inquiry from which I can continue my research on the multiple declensions of scientia *iuris*. The scholarly venues Neoh explores in his account confirm that, rather than being a conclusive appraisal of the themes it discusses, my book is just the beginning of what appears to be a very long and difficult journey into the twists and turns that make up the philosophy of legal education and practice in comparative perspective.

¹⁴ Metaphysics, 1028^a32-33.

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