# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Note on the Authors</td>
<td>XI</td>
</tr>
<tr>
<td>General Editor’s Preface to Volumes 9 and 10 of the Treatise</td>
<td>XV</td>
</tr>
<tr>
<td>Preface to Volume 9</td>
<td>XIX</td>
</tr>
</tbody>
</table>

## Chapter 1 - *Scientia Iuris* and *Ius Naturae*:
The Jurisprudence of the Holy Roman Empire in the Seventeenth and Eighteenth Centuries
(by Merio Scattola)  

1.1. Introductory Remarks  
1.2. Main Characteristics of Legal and Political Thought in the Early Seventeenth Century  
1.2.1. *An Academic Discipline*  
1.2.2. *Jurisprudence and Politics*  
1.3. Legal Doctrine in the Early Seventeenth Century  
1.3.1. *Dialectics and Law: The System of Academic Teaching*  
1.3.2. *A Topological Philosophy of Law*  
1.3.3. *The Transformation of Jurisprudence in the Seventeenth Century*  
1.4. The History of Natural Law in the Late Seventeenth and Early Eighteenth Centuries  
1.5. The Epistemology of Modern Natural Law  
1.5.1. *The Method of Rational Calculation*  
1.5.2. *The Principle of Natural Law*  
1.5.3. *The History of Natural Law as the History of Its Principles*  
1.5.4. *Rational Constraint*  
1.5.5. *The Enforcement of Natural Law in Political Society*  

## Chapter 2 - French Legal Science in the 17th and 18th Centuries: To the Limits of the Theory of Law
(by Jean-Louis Halpérin)  

2.1. Domat and the Systematic Construction of the Law  
2.1.1. *Didactic Intentions*  
2.1.2. *The Traité des lois and the Foundations of Natural Law*
Chapter 3 - Conceptual Aspects of Legal Enlightenment in Europe
(by Maximiliano Hernández Marcos)

3.1. General Idea of the European Legal Enlightenment
3.1.1. On the Concept of the Enlightenment in Europe
3.1.1.1. The Temporalisation of History
3.1.1.2. The Conceptualisation of the Metaphor of Light
3.1.1.3. Enlightenment as Politicisation
3.1.2. Structural Aspects of the Enlightened Conscience of Law. Panoramic Overview

3.2. The Obscureness of Jurisprudence
3.2.1. The Twilight of the Justinian Myth
3.2.2. The Struggle against Obscurity in Judicial Interpretation
3.2.2.1. The Canon of Literal Interpretation
3.2.2.2. Authentic Interpretation and Recourse to the Legislator

3.3. The Natural Light of Reason in Jurisprudence
3.3.1. From Natural Law to the Science of Legislation
3.3.1.1. The Historical Formation of the Science of Legislation: the State as a Legislator and the Rationality of the Sovereign Will
3.3.1.2. Criteria of Rationality and Forms of Development of the Science of Legislation
3.3.2. The Meanings of Law
3.3.2.1. The Law as a Mandate
3.3.2.2. The Law as a Necessary Relation
3.3.2.3. The Law as a General Will
3.3.3. The Space of Private Rights: Natural Liberty and Civil Liberty
3.3.4. The Lights of Reason of Criminal Law
3.3.4.1. Basic Doctrinal Lines of Criminalist Culture: A Historical Balance
3.3.4.2. Concerning New Concepts of Crime and Punishment
Chapter 4 - The Many Faces of the Codification of Law in Modern Continental Europe
(by Damiano Canale)

4.1. Codes and Codifications: An Overview

4.2. Three Discursive Levels
   4.2.1. Legislative Technique
   4.2.2. Legal Theory
   4.2.3. Legal Philosophy

4.3. Natural Law and Codification

4.4. An Alternative Framework
   4.4.1. Three Theses
   4.4.2. State, Civil Society, and Codification

4.5. The French Model (Code Civil, 1804)
   4.5.1. Theoretical Background
      4.5.1.1. The Heritage of French Legal Science
      4.5.1.2. Natural Law and Revolution
      4.5.1.3. Legislation as Education to Social Morality
      4.5.1.4. Portalis’s Reading of Montesquieu’s Science of Government
      4.5.1.5. Did Bentham Influence the French Path to Codification?
   4.5.2. The Constitutional Plan
   4.5.3. Structural Features

4.6. The Prussian Model (ALR, 1794)
   4.6.1. Theoretical Background
      4.6.1.1. Christian Wolff and the German Rank Society (ständische Gesellschaft)
      4.6.1.2. The Wolffian School: From Practical Philosophy to the Science of Legislation
   4.6.2. The Constitutional Plan
   4.6.3. Structural Features

4.7. The Austrian Model (ABGB, 1811)
   4.7.1. Theoretical Background
      4.7.1.1. Catholic Natural Law and Legislation
      4.7.1.2. Zeiller’s Reception of Kant’s Philosophy of Law
   4.7.2. The Constitutional Plan
   4.7.3. Structural Features

4.8. Conclusion
Chapter 5 - German Legal Science: The Crisis of Natural Law Theory, the Historicisms, and “Conceptual Jurisprudence”  
(by Paolo Becchi)  

5.1. Introduction  

5.2. Gustav Hugo and the Crisis of German Natural Law Theory  
5.2.1. From Natural Law Theory to the “Philosophy of Positive Law”  
5.2.2. A Few Comparisons with the Late Natural Law Tradition in Germany  

5.3. Thibaut and Savigny: The Polemic on Codification  
5.3.1. Premise  
5.3.2. Thibaut’s Position  
5.3.2.1. Political Background  
5.3.2.2. Codification as a Way to Supersede “Legal Particularism” and Simplify the Legal Framework  
5.3.2.3. Legal and Political Ideology  
5.3.3. Savigny’s Criticism  
5.3.3.1. Meaning and Limitations of an Interpretive Guide  
5.3.3.2. The Historicity of Law and the Role of the Jurists  
5.3.3.3. Legislation and the Jurists’ Law (Juristenrecht)  
5.3.3.3.1. The Law  
5.3.3.3.2. The Jurists’ Law  
5.3.3.3.3. The Problem of Interpretation: A Brief Overview  

5.4. Hegel, Law, and the Jurists  
5.4.1. The Traditional View  
5.4.2. A New, and Different, Start  
5.4.3. The Judge and the Law  

5.5. Puchta and the Autonomy of Legal Doctrine  
5.5.1. Premise  
5.5.2. A Formally Equal Law  
5.5.3. A “Pure” Science of Law  

Chapter 6 - Science of Administration and Administrative Law  
(by Luca Mannori and Bernardo Sordi)  

6.1. Definition of the Topic and Problems of Method  
6.2. Between the Middle Ages and the Modern Age: The Primacy of Justice
# TABLE OF CONTENTS

6.3. The Seventeenth and Eighteenth Centuries: The Growth of Public Tasks  
6.4. The Seventeenth-Eighteenth Century: The Formation of Commissarial Bureaucracies  
6.5. The Language of the Revolution  
6.6. The Invention of Administrative Law  
6.7. In Search of the “Rechtsstaat”  
6.8. Administrative Law and Science of Administration: Towards the Primacy of the Legal Method  
6.9. The Slow Emergence of Administrative Law in England  
6.10. The Discovery of Service Public  
6.11. Development and Decline of State Interventionism

---

Chapter 7 - Constitutionalism  
(\textit{by Maurizio Fioravanti})

7.1. Foreword  
7.2. Constitutionalism of the Origins  
7.3. Constitutionalism of Revolutions  
7.4. Constitutionalism of the Liberal Age  
7.5. Conclusions: A Look at the Twentieth Century

---

Chapter 8 - From Jhering to Radbruch: On the Logic of Traditional Legal Concepts to the Social Theories of Law to the Renewal of Legal Idealism  
(\textit{by Hasso Hofmann})

8.1. Preface  
8.2. Rudolf von Jhering’s Discovery of the Purpose in Law  
8.2.1. Life and Works  
8.2.2. “Constructive Jurisprudence” according to the “Method of Natural History”  
8.2.3. The Crisis—The Struggle for Right  
8.2.4. From Legal Formalism to Legal Naturalism  
8.2.5. The Question of Legal Positivism  
8.2.6. An Evolutionary Theory of Law  
8.2.7. Importance and Impact  
8.2.7.1. Jhering as a Precursor  
8.2.7.2. The Modern School of Criminal Law, the Free Law Movement and Jurisprudence of Interests  
8.2.7.3. Sociological Jurisprudence (Roscoe Pound)  
8.3. Social Theories of Law (“Legal Naturalism”)
8.3.1. The Legal Theorists of the New “Scientific School” in France

8.3.1.1. François Gény 319
8.3.1.2. Léon Duguit 321
8.3.1.3. Maurice Hauriou 322

8.3.2. Adolf Merkel’s Allgemeine Rechtslehre (General Theory of Law) as a “Positivistic Philosophy of Law” 324

8.3.3. Jurisprudence in the Class Society—Anton Menger’s “Jurists’ Socialism” 327

8.3.4. Otto von Gierke’s Social Law of Associations 331

8.3.4.1. Gierke’s Position and Importance 331
8.3.4.2. Life and Scientific Development 332
8.3.4.3. Central Topics: The Actual Body Corporate and the Development of the Law of Associations 335

8.4. Towards Legal Neo-Idealism 337

8.4.1. Josef Kohler’s Criticism of Jhering in the Name of Metaphysics 337

8.4.2. Fritz Berolzheimer’s Neo-Hegelian “Real Idealism” 342

8.4.3. The Purpose of Law as a Value—The Neo-Kantian Beginnings of Gustav Radbruch and the End of the “Long 19th Century” 347

8.4.3.1. Roots 347
8.4.3.2. Radbruch’s Review of the 19th Century 350

Bibliography 355

Index of Subjects 399

Index of Names 401
A Treatise of Legal Philosophy and General Jurisprudence
Vol. 9: A History of the Philosophy of Law in the Civil Law World, 1600-1900; Vol. 10: The Philosophers' Philosophy of Law from the Seventeenth Century to Our Days.
2009, XXXVII, 752 p. In 2 volumes, not available separately., Hardcover