Preface

This book wraps up a considerable amount of the work I have been doing in philosophy of law over the past fifty years. Not included are explorations in the area of language, argumentation, epistemology and transitional justice. The focus is on law as a political artifact. Thus, I concentrate on topics like constituent power and public authority, democracy and the rule of law. This opens up a fascinating though vast range of questions, to which the perspective of a first person plural agent appeared to gradually lend more and more coherence.

Reading philosophy of action as a ‘recognized student’ in Oxford (in the early 1970s), I had the good fortune of being offered a teaching position at Tilburg University Law School (1973). Soon Rousseau’s *Social Contract* came my way, for two main reasons. First, the Chair of legal philosophy felt that no law student should leave his class without a close encounter with this text. Second, such encounter was bound to remain of the third kind, as virtually no student could read French any more. As an exercise in team building, our group started to translate and comment the classic, so that the students could meet the alien. I was assigned the task of editing the results. Over the course of the years (as a musician returning to the same score over and over again) I made several versions of the translation. But I also gradually discovered that many of the other projects I embarked on brought me back to my reading of Rousseau’s politico-legal philosophy along one way or another. However, very little of my research in this area was published in English. For the present monograph I selected and reworked the Introduction to a new edition of the translation (2015), as well as parts of a Dutch book (2000).

The glossarial work on Rousseau began to converge with more analytical projects when some colleagues (I gratefully remember Filip Buekens and Anthonie Meijers) invited me to present a paper to the third Collective Intentionality Conference (Rotterdam, 2002). Addressing the topic of popular sovereignty from this perspective allowed me to build on two other strands of research I had followed. I had thoroughly acquainted myself with the work of Hector-Neri Castañeda since my PhD (1983) and had introduced his thought to a Dutch audience in a booklet when he was lecturing on the Tinbergen Chair at Erasmus University Rotterdam (1989). Also, I had been invited to participate in an ESRC seminar group on the European Union as a context of theorizing law, convened on a regular basis in Edinburgh (1992–2000) by Zenon Bańkowski and Andrew Scott. Discussions with them, and with Neil

MacCormick, Neil Walker, Emiliós Christodoulis, Carole Lyons and many others, were very inspiring. The same EU context continued to fascinate me during the three-year seminar I convened together with Sacha Prechal (now a judge in the Court of Justice of the EU) on divergence and convergence of fundamental legal concepts such as rights and discretion, leading to a volume in the *Studies in International Law Series* with Oxford University Press (2008).

From 2002 onwards the topic of plural intentional action as a model for democracy took centre stage in the research of our legal philosophy group, increasingly including aspects which the basic versions of the idea had left aside, such as representation and authority. To no small part this was due to Hans K. Lindahl's scholarly and creative energy. Over the years, Hans and I found invaluable critical support from other members of the group, both senior (Mogobe B. Ramose, Harry Willekens, David Janssens, Daniel Augenstein) and junior researchers. Of the latter I mention in particular our *promoti* Sergio Espigares Tallón, Johanna Klein Kranenberg, Quoc Loc Hong, Alessio lo Giudice, Luigi Corrias, Nanda Oudejans, Michiel Besters, Chiara Rauce, Umberto Sconfienza, Jorge Restrepo Ramos, Beira Aguilar Rubiano and Carl Lewis. None of them became 'their master's voice', I am proud to say. The least of our concerns was to establish a 'Tilburg school', as reviewers sometimes called it. What seemed much more interesting was to explore pathways in legal theory other than the well-trodden ones, often accessible mainly in other languages than English and coming from other traditions in philosophy than the Anglo-American, valuable as these may be in their own right. We felt the need to broaden the received views in jurisprudence by returning to the tradition of European phenomenology, too quickly overturned and set aside by so-called analytical, structuralist and deconstructivist paradigms. Bernhard Waldenfels' writings convinced us that this was a fruitful revisit, as it reinforced the feasibility of a first person plural perspective on law. Philosophy at Tilburg University had always kept a place of honour for the heirs of this tradition, hosting conferences with Gadamer (1984) and Habermas (1994), and awarding honorary doctorates to Ricoeur (1982) and Lefort (1992). With regard to the present volume, the upshot of our polyglot explorations is that it features some texts which were previously published in other languages than English, in particular German, Spanish and Dutch. All of them were thoroughly revised.

When, after a long period as Dean of Philosophy and Vice-Dean Research for the Humanities, I returned to teaching and writing, I spent a semester at Venice International University (2010). A large part of the present book took shape there. But I had underestimated what it takes to switch back from administrative to academic thinking, at least in my case. I kept the manuscript in file, hoping to profit from new challenges. These came with the two seminars by which my formal retirement was celebrated (2012). One was with keynote

speaker Margaret Gilbert and contributors Joel Anderson, Frank Hindriks and Titus Stahl; the other with keynote speaker Bernhard Waldenfels and contributors Petra Gehring, Emiliós Christodoulidis, Johan VanderWalt and Neil Walker. This two-pronged farewell did not so much emphasize eagerness on the part of the convening colleagues to get rid of me (or so I want to believe) as it underlined my limited success in finding the missing link between different styles of doing philosophy. Be that as it may, both events inspired me to put the theme of ‘we-mode and law’ into the key of shared embodiment. The invitation to continue as honorary professor on a part-time basis at Tilburg Law School (2012–18) provided me with the right mix of duties, liberties, facilities and, most importantly, people, to stay on the track of academic life. I was happy, in particular, to keep teaching four more years in the Research Master Programme in law – a joint venture between the law schools of Tilburg and KU Leuven – and in the PhD programme of Tilburg Law School. I have always regarded Leuven as my second home university. To be invited as a visiting professor (1984–5) and to be appointed as an adjunct professor for the Research LLM (2011–14) was a true honour. Thomas Fossen’s proposal to co-organize a seminar on *The Portrayal of Politics* (Leiden, 2017) I welcomed as a motivating opportunity to present some first ideas on political embodiment. Stimulating also was the invitation to deliver a keynote paper at the International Conference on Phenomenology and Law (2018) at the China University of Political Science and Law (Beijing), organized by Haojun Zhang and Andrea Altobrando. I also profited from the exchange at a round table in Tilburg (2018) on Hans Lindahl’s book *Authority and the Globalisation of Inclusion and Exclusion* (Cambridge, 2018). I realize that, in the present monograph, I have not done nearly enough justice to the valuable comments I received on these occasions from Mónica Brito Vieira (York), Thomas Fossen (Leiden), Ferdinando Menga (Università della Campania ‘Luigi Vanvitelli’, Naples) Peter Niesen (Hamburg) and Desmond Manderson (ANU, Canberra). The most incisive and fruitful criticism, however, on what is now Chapter 6 of the present book I received at two meetings of our own seminar group at Tilburg (2017; 2019). This could be expected as, over the years, so many colleagues from other universities have assured us after their visit that the exchanges in this seminar are truly academic ones.

To all the institutions and, in particular, all the persons I mentioned above, as well as to those I did not mention but who will realize that they, too, were in the background of the many inspiring occasions and opportunities that came my way, I want to express my sincere gratitude. However, more than to all these wonderful colleagues I am indebted to Hans Lindahl, my successor on the Chair of legal philosophy in Tilburg. I still praise the day that we met in Louvain-la-neuve, decades ago at a conference organized by Jacques Lenoble. The rest is history, as they say. Our exchange covers many more pages than

my references reflect. Hans did me the immense honour of dedicating his book mentioned above ‘in friendship and admiration’. The only way for me to respond in writing is to keep doing what Hans and I have been doing for so many decades now in a true ‘joint commitment’: to remain very open with one another as to how we would take each other’s investigations on from where we found them. This is what I try to do here, particularly in Chapter 6. I believe his argument received sufficient critical appraisal around the world to dismantle the suspicion that I am just retracing a citation circle.

As said, this book pulls together the strings of different texts, contexts, projects and opportunities. Although most of the chapters that follow were rewritten, it was impossible to avoid some overlap between them. The reader will soon detect that it was equally impossible to fill a number of gaps in the overall argument, of which I am painfully aware.

I thankfully acknowledge permission to use the following materials previously published elsewhere from the following publishers for the following chapters:

- From Taylor & Francis for Ch. 4: ‘First-Person Plural Legislature: Political Reflexivity and Representation.’ In: *Philosophical Explorations*, 6, 2003 (3), pp. 235-250.
- From Universidad del Rosario for Ch. 5: ‘El demos como un yo plural, o más notas al pie a Rousseau.’ In: A Chaparro Amaya, B. van Roermund, & W. Herrera Romero (eds.). *¿Quiénes somos ‘nosotros’?: O cómo (no) hablar en primera persona del plural*. Bogotá: Editorial Universidad del Rosario, 2015, pp. 143–71 (Colección Textos de Ciencias Humanas).
- From Cambridge University Press for Ch. 7: ‘The embryo and its rights: Technology and teleology.’ In: *German Law Journal*, 14, 2013, pp. 1939–58.
- From Hart Publishing (an imprint of Bloomsbury Publishing Plc.) for Ch. 8: ‘Migrants, humans and human rights: The right to move as the right to stay.’ In: H. Lindahl (Ed.), *A right to inclusion and exclusion? Normative fault lines of the EU's area of freedom, security and justice*. Oxford: Hart Publishing, 2009. 161-184.
- From Boom Juridische Uitgevers for Ch. 9: ‘De halve waarheid van het populisme.’ In: *Nederlands Tijdschrift voor Rechtsfilosofie & Rechtstheorie*, 40, 2011, 118-130.
- From Nomos Verlagsgesellschaft for Ch. 9: ‘Populismus und Demokratie: eine Kritik auf den Spuren Leforts’. In: A. Wagner (Hrsg.), *Am leeren Ort der Macht. Das Staats- und Politikverständnis Claude Leforts*. Baden-Baden, Nomos Verlag, 2012 (Staatsverständnisse, Bd. 54), 143–63.

I dedicate this book to the one who waited too long for me to finish it: to my wife Emilie. Without her love, patient and impatient at the same time, I would have lost sight of the really important things in life long ago.

BvR