Giorgio Bongiovanni
Giovanni Sartor
Chiara Valentini
Editors

Law and Philosophy Library 86

Reasonableness and Law

Springer

Denninger, E., H. Ridder, and H. Stein, eds. 1984. Art. 1–20. In *Kommentar zum Grundgesetz für die Bundesrepublik Deutschland*, vol. 1. Neuwied: Luchterland.
Devlin, P. 1976. Judges and Lawmakers. *Modern Law Review* 39: 1–16.
Fletcher, G.P. 1998. Comparative Law as a Subversive Discipline. *American Journal of Comparative Law* 46: 683–700.
Freund, G.K. 1991. Look Up in the Sky, it's a Bird, it's a Plane . . . it's Reasonableness. *Southwestern University Law Review* 20.
Gale, W.S. 2005. Unreasonableness and Proportionality: Recent Developments in Judicial Review. *Scots Law Times* 4: 23–6.
Gerapetritis, G. 1997. *Proportionality in Administrative Law: Judicial Review in France, Greece, England and in the European Community*. Athens: Sakkoula.
Gohin, O. 2005. *Contentieux administratif*. 4th ed. Paris: Lexis Nexis SA.
Klíma, K., ed. 2005. *Komentář k Ústavě a Listině*. Plzeň: Aleš Čeněk.
Knapp, V. 1995. *Teorie práva*. Prague: C.H. Beck.
Künnecke, M. 2007. *Tradition and Change in Administrative Law: An Anglo-German Comparison*. Berlin: Springer.
Schmidt-Bleibtreu, B., and F. Klein, eds. 2004. *Kommentar zum Grundgesetz*. 10th ed. Neuwied: Luchterland.
Schoch, F., E. Schmidt-Assmann, and R. Pietzner, eds. 2007. *Verwaltungsgerichtsordnung*. 14th ed. Munich: C.H. Beck.
Schwarze, J. 2006. *European Administrative Law*. London: Sweet & Maxwell.
Sčotková, A. 2007. Rovnost a zákaz diskriminace v judikatuře Ústavního soudu ČR. In *Rovnost a diskriminace*. Ed. M. Bobek, P. Boučková and Z. Kühn. Prague: C.H. Beck.
Sossin, L. 2002. An Intimate Approach to Fairness, Impartiality and Reasonableness in Administrative Law. *Queen's Law Journal* 27: 809–58.
Stelkens, P., H.J. Bonk, and M. Sachs, eds. 2001. *Verwaltungsverfahrengesetz*. 6th ed. Munich: C.H. Beck.
Stern, K. 1977. Grundbegriffe und Grundlagen des Staatsrecht, Strukturprinzipien der Verfassung. In *Das Staatsrecht der Bundesrepublik Deutschland*, vol. 1. Munich: C.H. Beck.
Wharam, A. 1973. Judicial Control of Delegated Legislation. *Modern Law Review* 36: 611–23.

Part IIc
Reasonableness in Biolaw

Reasonableness, Bioethics, and Biolaw

Carla Faralli

There are two perspectives from which I will approach the topic of reasonableness in biolaw: I will take, on the one hand, a philosophical and conceptual perspective from which to consider the relation between bioethics and law, and on the other hand a legal perspective from which to instead consider the sources of biolaw.

Let me start, then, from the first of these two perspectives.

(1) As is known, the word *biolaw* is a neologism based on another neologism, this being *bioethics*, a word designating in a broad sense the area of the law that addresses the whole range of issues relating to the protection of life, human and nonhuman alike (inclusive of animal life and the environment) in the context of the ever-expanding technological applications of biology and medicine.

The relation between bioethics and law is a widely debated question, and it can be framed with some simplification in theoretical terms by singling out two opposing camps. On one side are those who question or even reject the idea of regulating bioethical issues by law, and on the other side are those who judge such biolaw to be useful and even necessary.

But these positions are in truth only two abstractions, for they each bundle together an assortment of views and concerns. Thus, a closer look at the first group will reveal that some believe that such legal regulation of bioethical issues may pose a hindrance to scientific development; others, especially those who are religiously minded, feel that by regulating such things as euthanasia, medically assisted procreation, and the like, we are thereby legitimizing these practices, even if the intent is to curb or stop them; some feel comfortable that the scientific community can provide effective self-regulation through its ethical committees, deontological codes, and declarations of principle adopted by the international community of physicians and scientists; and still others regard bio-legislation as a case of government interference in the private sphere, a practice that, in their estimation, amounts almost inevitably to forcing people to subscribe in action to particular conceptions of morality.

C. Faralli (✉)
Faculty of Law, Alma Mater Studiorum, University of Bologna, Bologna, Italy
e-mail: carla.faralli@unibo.it

I would like to thank Filippo Valente for the translation and Renata Abicca, Francesca Faenza, and Chiara Valentini for their contribution in writing and revising this article.

G. Bongiovanni et al. (eds.), *Reasonableness and Law*, Law and Philosophy Library 86,
DOI 10.1007/978-1-4020-8500-0_16,

A case apart in the group opposed to regulating bioethical issues by law are those who argue that the law we already have suffices of itself to do what biolaw is specifically designed to do: Why forge a dedicated law when we can easily bend existing law to do the same job, by reasoning from analogy, for example, or by invoking the principles embedded in the Constitution?

The brief words spent sketching out the criticism made against biolaw show that opposition to it comes in varying degrees, ranging from an unconditional no—that is, no form of law should ever be allowed to enter into bioethical issues—to a qualified rejection: Only the specific form of law which is legislation should be barred entrance.

Like the opponents of biolaw, its advocates make up a motley group, but the different positions on this side of the debate can be said to come down essentially to two. Thus, while everyone in this camp agrees that bioethical questions should come under the purview of the law, some believe that these questions must be regulated in conformance with specific moral values, whereas others reject this idea and maintain that law in bioethics must enable each person to pursue his or her own values, subject only to the condition that no harm be done to others in consequence of such a pursuit.[1]

The first position entails strict, authoritative legislation establishing stringent prohibitions and rigid models. Indeed, it posits foundational principles which can be known and be recognized as absolutely right, or at least can gain wide consensus in society, and which therefore justify enforcing them by law. But this way we will end up holding up a single moral conception as superior, thereby undermining our ability to manage in any adequate manner the plural conceptions present in contemporary societies.

The second position entails, in the words of Stefano Rodotà (1995, 2006), a "lean" and "open-ended" legislation: lean because the rules should only be so many and not be densely packed with moral content, but should rather be focused on method and procedure; and open-ended because the law, rather than supporting a single, fully loaded moral point of view regarded as the highest good, should leave that choice up to its citizens and enable them to pursue different lives and conceptions.

Indeed, this second position appreciates the difficulty involved in appealing to widely shared moral principles, and so views the law not as a tool for enforcing particular moral conceptions but as a means with which to achieve a fruitful cooperation, coexistence, and dialogue among the members of society. We can recognize here Mill's view that the task of law is not to force citizens to be virtuous, under this or that doctrine or conception of the good life, but rather to guarantee for them the right to live as they choose (according to their moral convictions) without thereby harming others or preventing them from exercising their equal rights.

---

[1] For different perspectives on this point, see Dalla Torre (1993); Santosuosso (1995); D'Agostino (1998); Borsellino (2009); Palazzani (2002); Casonato (2006).

This second position strikes me as superior to the first, not only for theoretical reasons but on practical grounds, too. Theoretically, this position is consistent with a noncognitivist metaethics, a view that does not espouse any moral truths. And on the practical side, the position seems better suited to a pluralist and multiethnic society such as ours. By this I mean a society governed by a constitution (an example being the Italian Constitution) among whose fundamental principles is that of the separation of church and state. As upheld in different decisions of the Italian Constitutional Court, this principle entails that "the state will guarantee protection of the freedom of religion in a system of cultural pluralism" (Faralli 2007, 353–62).

This latter position can be understood as providing the background for reasonable norms, if we mean by *reasonableness* (broadly understood) a willingness to take into account, with a view to achieving coexistence in a certain historical and social context, the need to reach an arrangement in which there is room not for a single reason but for many reasons.

Norms can be described as reasonable if they proceed from a shared method of discussion rather than from an antecedent doctrine—if they can achieve an "overlapping consensus," in the words of John Rawls (1993), rather than making it so that a perfectionist conception of the good life should prevail upon other views.

If we can speak of reasonableness in biolaw, that is crucially because biolaw is grounded in premises that can reasonably be shared rather than in revealed premises or premises proper to a specific culture or moral option, as happens in the first of the two positions previously illustrated. After all, bioethics has been defined precisely in this spirit, as the domain of the reasonable (Battaglia 1999), that is, a sphere whose dilemmas cannot be resolved in the same way as we resolve logical contradictions, and whose outcomes make no pretence to be true but only pretend to be adequately argued and justified.

If we make a brief comparative assessment of biolaw, especially in Europe, we will notice that a patchwork of different legislative solutions have been offered in this regard, but here, too, in parallel to what can be observed in the theoretical debate, the different kinds of legislation can be reduced to essentially two models: a hands-off model, prevalent in common-law countries, and an interventionist model, which tends to be more entrenched in civil-law countries, and which comes in two forms, that is, a rigid one that sets out precise regulative frameworks and a lean one based on the use of principles.

At the same time, however, if we look beyond this basic difference between common-law and civil-law countries, we will find a common theme consisting in the role of the courts, which have been described as a "stealthy yet necessary" source of biolaw, since the courts find themselves taking up cases for which they will, in varying degrees depending on context, apply existing law, or modify precedent, or create a new precedent.

(2) That last point introduces us to the second of the two perspectives mentioned at the outset, namely, that from which to consider the *sources* of biolaw. This area of law brings into relief some of the knottiest and most important issues in the contemporary debate on the sources of law. Let us take the situation in Italy.

Article 1 of the preliminary provisions to the Italian Civil Code lists as sources of law statutes, regulations, corporative rules (later repealed), and customs. This is an article that, like many others in the same code, was framed in the mould of a strict legal positivism, a view that has waned as both a theory and a historical development. To see what this means, one need only consider the enactment of the Italian Constitution, with its provisions claiming the status of *leges legum*, and more recently the coming into effect of supranational sources of law (international and EU law), which too stand above domestic statutory law. What is more, the system of sources of law (meaning the system set up by the preliminary provisions just mentioned) has been coming apart not only from the top but also from the bottom. I am thinking here about a well-known essay by Francesco Galgano in which he observes that traditionally, court rulings and contracts have not been considered sources of law, but if we continue along this line—conceiving court rulings and contracts as mere applications of existing law rather than as sources of new law—we will preclude to ourselves any possibility of understanding how the law is changing in our time (Galgano 1990, 158).

So, when speaking of the sources of biolaw, we should proceed on a broader conception drawing on a larger pool of sources as follows:

We have, to begin with, the Constitution, in which are contained all the principles regarded as essential to bioethics: justice, autonomy, beneficence, non-maleficence, and so on. Thus, for example, we can look to Article 32, making health care a fundamental right and providing that no one may be forced to undergo treatment without consent, or we can look to Articles 3 and 13, setting forth principles of equality, nondiscrimination, and inviolability of personal freedom, among others.

We also importantly have entire tracts of international law, from the 1948 Universal Declaration of Human Rights to the Convention on Human Rights and Biomedicine, signed in Oviedo in 1997, as well as UNESCO's Universal Declaration on the Human Genome and Human Rights, also of 1997. (It should be mentioned here, in regard to the Oviedo Convention on Human Rights and Biomedicine, that uncertainties still linger in Italy about its force; indeed, the convention was ratified by way of Law 145 of 28 March 2001, but Article 3 of this law requires enactment of further rules by which to adapt the Italian legal system to the convention. Now, the decrees by which to achieve this adaptation have never been issued, so it remains an open question whether the Oviedo Convention is valid law in Italy, despite the fact that judges do often refer to it in their decisions.)

Another important supranational source of biolaw comes from the recommendations and directives of the European Union.

We then have our own domestic law. After a long period of idleness, the Italian government started enacting legislation relating to bioethics, including the laws on privacy, the certification of death, organ donation and transplant, and assisted reproductive technology. Unlike other countries, which have chosen to regulate by the use of principles, in keeping with the lean-intervention model, Italy has taken the route of crafting a close, tightly regulative legislation that goes into the minutiae of its subject matter. This stricter model is liable to carry two sorts of risks as follows.

For one thing, there is the risk of setting out a body of law likely to easily pass into obsolescence in a contemporary context of rapid societal change and scientific advancement: The risk, therefore, is that such law will always be outdated.

And, for another thing, a dense biolaw carries the risk of placing law in the service of moral values: As Rodotà (2006) observes, we live in a society that has emptied its stock of shared values, and this is not a void that can be filled through a majority ethics enforced by law, an ethics enacted by majority vote in a legislature.

By way of a typical example, we might mention Italy's Law No. 40 of 2004, on medically assisted procreation. This law espouses a specific moral option, making law subservient to certain values on which there is no consensus in society. In fact, it is proclaimed from the very start of this law (in Article 1) that its purpose is to secure "the rights of all those involved, including the rights of the conceived child," and that the foundation on which rests the entire framework of the law itself is the unconditional protection of the embryo. This introduces, in the words of Stefano Rodotà, a sort of "dictatorship of the embryo" in accord with a particular moral position. And that fits the description of an unreasonable law, a classic example of how *not* to frame a law in bioethics.

Let us continue, then, with our overview of the sources of biolaw. We mentioned the Constitution, international law, and domestic law. Let us introduce now uses and customs: This is not a source that can significantly be relied on in bioethics or be used for specific bioethical applications. Indeed, custom is based on two essential elements—uniform practices and consensus—neither of which is available here.

Thus, on the one hand, customs can only take hold against the background of a uniform substratum, this being the material element (the *usus* or *diuturnitas*) making it possible for fairly regular patterns of behaviour to obtain, but the biotechnologies seem to be advancing at a pace far too fast for that to happen.

And, on the other hand, custom requires as its other foundational element a consensus (*opinio juris seu necessitatis*). Yet this is precisely what a contemporary multiethnic, multicultural society cannot count on: It cannot draw on a fund of shared values, the basis on which a consensus can be built as to what we should take to be the guiding principles in addressing matters relating to bioethics.

Uses and customs are sometimes even viewed as the basis on which rest deontological codes, understood as codes of ethics, in which binding rules and principles are established setting out duties for this or that profession. But legal scholarship is divided on this issue: While some do regard these codes as grounded in custom, others construe them as belonging outside the province of the law, and still others point out their role as serviceable guidelines with which to fill gaps in the law.

Another source consists in the legal devices based on the principle of private autonomy, devices such as informed consent and advance medical directives (the latter still being debated in Italy): This is, in my view, an important way to protect personal autonomy and freedom of choice.

Finally, there is the case law of the courts, an important source not only in common-law but also in civil-law countries like ours. Indeed here, too, judge-made law fills the vacuum where statutory law is silent.

Thus, for example, before Law 40/2004 went into effect, there was no overall scheme in Italy under which to regulate medically assisted procreation. So, for a long time, the task of protecting the constitutional rights of those concerned (children, biological parents, social parents, physicians, and so on) fell to the judges, who in this role found themselves working on a case-by-case basis, often invoking the notion of reasonableness expressed by the Constitutional Court, which back in 1998 (in Ruling No. 347 of 26 Sept. 1998,[2] as on several other occasions) stated:

> The task of working out a reasonable balance between the different constitutional principles involved in protecting human dignity is primarily entrusted to the legislator. However, in view of the current legislative void, it will be for the judge to search the entire normative system and find the interpretation best suited to securing the constitutional protections in question.

In keeping with this pronouncement, the Court of Cassation (Sezione I Civile) rendered a decision (with Ruling No. 2315 of 16 March 1999)[3] on a case involving the contentious issue of whether a husband who initially consented to his wife's artificial insemination by donor (AID) has a right to disown the child so conceived. The court found that there is no such right of the husband:

> A husband who initially consented to his wife's artificial insemination with the semen of a donor can have second thoughts about such consent, but this does not entitle him to disown the child so conceived, because to recognize such a right for the husband is to deprive the child of one of the two parental figures, thereby also taking away the care and love that such a figure can provide: By an act of the judge, the child would in effect become a fatherless child, considering that the donor's identity in artificial insemination by donor remains undisclosed by law, thereby making it impossible to establish the child's paternity. [. . .] If it were legally permitted to bring about a birth by committing to fatherhood, only to turn back on that commitment and disown the child, then we would have a law contrary to the very premises of the Constitution, and especially to the constitutional principle of solidarity.

In another case invoking the rule established by the Constitutional Court, the Tribunal of Palermo issued an order (08 January 1999)[4] authorizing a woman to carry through an artificial insemination by husband (AIH) despite the husband's death, a death that occurred after the embryos had been cryopreserved. As the tribunal found:

> A reasonable balance needs to be achieved between the different constitutional principles involved [. . .]: on the one hand, under Article 30, the Constitution establishes a child's right to psychophysical wellbeing, a right protected by making sure the child has a family with two parents providing two distinct parental models; but this principle needs to be weighed against Articles 2 and 32 of the Constitution, establishing the unborn child's right to life and the mother's right to psychophysical integrity. Indeed, it seems on balance more important to avoid the harm that *two* persons would be *certain* to suffer (these being the unborn child *and* the mother in case the embryo were destroyed after the husband's death) than the harm that *one* person *may* suffer (this being the child raised by a single parent), especially considering that the kind of harm involved in this latter case is a sociologically *constructed* harm framed

[2] Italian Constitutional Court, Ruling n. 347 of 26 September 1998.
[3] Italian Court of Cassation, Sezione I, Civil Law, Ruling n. 2315 of 16 March 1999.
[4] Tribunal of Palermo, ruling of 08 January 1999.

> with reference to a family model, a model which may well be preferable to other models in the abstract, and which is rooted in the most widely espoused morality, but which certainly is not the *only* model the Italian society has taken up, as a moment's thought will reveal if we only take account of the countless single-parent families that have formed in consequence of a divorce.

But even *after* Law 40/2004 went into effect, some rulings were issued in which the criterion of reasonableness serves as a basis on which to interpret the legislative framework and adapt it to the Constitution.

In a ruling of 24 September 2007,[5] the Tribunal of Cagliari recognized the legitimacy of preimplantation genetic diagnosis (embryo screening) on the basis of a constitutionally aligned interpretation of Law 40/2004. On this interpretation, preimplantation genetic diagnosis is at bottom consistent with prenatal diagnosis (carried out *during* pregnancy), a diagnosis deemed legitimate under current law. Indeed, both practices "are guided by the same purpose, that of making sure that those who are directly involved are properly informed about the health of the embryo, whether the embryo is already implanted in the uterus or is outside the uterus and waiting to be implanted." A prohibition against preimplantation diagnosis would therefore amount to a differential treatment of essentially analogous situations, and this would be constitutionally dubious because unreasonable: It would be unreasonable for the law to recognize for one woman a right to be fully informed about the embryo's health during pregnancy, while denying another woman the same right before the embryo is implanted in the uterus as part of an assisted reproductive technology (or ART) treatment.

More recently, in Ruling No. 398 of 21 January 2008,[6] the Tribunale Amministrativo Regionale of Lazio (Sezione III) weighed in on the debate by considering (among other things) the issue of whether Law 40/2004 should be deemed unreasonable for permitting practices that fail to adequately balance the need to protect a woman's health against the need to protect the life and health of the embryo.

The court described this law as "inherently irrational," for it sacrifices the very interests it sets out to protect. This applies in particular to the two provisions in issue, one of which prohibits the cryopreservation and the destruction of embryos, (art. 14 co.1) and the other the creation of embryos "in any number greater than that which is strictly necessary to a single implantation, and so in any number greater than three." (art. 14 co.2)

Indeed, the rationale behind the first rule is contradicted by the rationale behind the second, which, by making it possible to produce and at the same time implant three embryos to facilitate solving sterility or infertility problems, implicitly recognizes the sacrifice of produced and implanted embryos that fail to adhere.

Further, the obligation to contemporaneously implant no more than three embryos, independently of any medical evaluation, is unreasonable in another way, too, as remarked by Tribunale Ordinario in Florence in a judgment of 12 July 2008: by

---

[5] Tribunal of Cagliari, ruling of 24 September 2007.

[6] Tribunale Amministrativo Regionale del Lazio, Sezione III, Ruling n. 398 of 21 Jan. 2008.

ignoring that the likelihood of a successful implantation varies with the individual characteristics (age, health, and the like) of the women who undergo such treatment, the obligation in question unreasonably imposes an equal treatment on different classes of cases.

Both criticisms were ultimately heeded by the constitutional Court, which in Ruling No. 151 of 2009 declared Article 14(2) of Law No. 40/2004 unconstitutional, this on the ground that:

the law [40/2004] reveals [...] a limitation as concerns the protection afforded to the embryo, since even where you limit to three the number of embryos produced, you still concede that some of these embryos may not develop into a pregnancy [...]. And so, the protection provided for the embryo is in any event not absolute but is limited by a concern to strike an appropriate balance with the need to protect procreation. [...] the prohibition against creating no more than three embryos, without taking into account the woman's individual condition [...], ultimately comes into contrast with Article 3 of the Constitution, considered in a twofold way as a principle of reasonableness and equality, insofar as the law at issue reserves a like treatment for unlike situations.

We can appreciate from this discussion that the appeal to reasonableness necessarily involves a reference to the concrete case, and that the judgments involved in working out issues in bioethics are by and large *balancing* judgments, under a scheme in which the primacy of one interest, right, or value is established in relation to the specific case at hand, and in which the right or interest so defeated may instead prevail in a different case. Bioethics can be said in this sense to pertain to the sphere of the reasonable, which (as mentioned earlier) is understood to be the sphere in which the outcomes of an activity do not pretend to truth but only present themselves as grounded in argument with reference to the circumstances of the concrete case.

And this, in my opinion, explains why issues relating to bioethics do not pose as much a problem for the judge as they do for the legislator.

References

Battaglia, L. 1999. *Dimensioni della bioetica*. Genoa: Name.

Borsellino, P. 2009. *Bioetica tra morali e diritto*. Milan: Cortina.

Casonato, C. 2006. *Introduzione al biodiritto: la bioetica nel diritto costituzionale comparato*. Trento: Università degli Studi.

D'Agostino, F. 1998. *Bioetica nella prospettiva della filosofia del diritto*. Turin: Giappichelli.

Dalla Torre, G. 1993. *Bioetica e diritto: saggi*. Turin: Giappichelli.

Faralli, C. 2007. Laicità e bioetica. In *Laicità e diritto*. Ed. S. Canestrari. Bologna: BUP.

Galgano, F. 1990. Le fonti del diritto nella società post-industriale. *Sociologia del Diritto* 17: 153–64.

Palazzani, L. 2002. *Introduzione alla biogiuridica*. Turin: Giappichelli.

Rawls, J. 1993. *Political Liberalism*. New York: Columbia University Press.

Rodotà, S. 1995. *Tecnologie e diritti*. Bologna: Il Mulino.

Rodotà, S. 2006. *La vita e le regole: tra diritto e non diritto*. Milan: Feltrinelli.

Santosuosso, A. 1995. Bioetica e diritto. In *Medicina e diritto: prospettive e responsabilità della professione medica oggi*. Ed. M. Barni and A. Santosuosso. Milan: Giuffrè.

Reasonableness in Biolaw: Is it Necessary?

Amedeo Santosuosso

1 Framing the Issue

The concepts of reasonableness and biolaw may differ in kind as well as in content, but they share the characteristic of their each being at once elusive and multifaceted. Discussing them in the same context carries the obvious risk of colouring biolaw with the uncertainty of reasonableness, and vice versa. Thus, how to frame and discuss such heterogeneous concepts and retain a sufficient degree of consistency? It may help, in such a situation, to provide some preliminary definitions and clarifications.

Apart from a basic connection with rules that characterizes both legal reasoning and the legal community, they both seem to be quite anarchic (at least more so than is usually suspected) and to escape strict rational thinking, since both come under the influence of historical factors and political power, as well as of social and cultural factors at large. It is in this spirit that Jean Giraudoux (1882–1944) compares law and jurists to poetry and poets: "Le droit est la plus puissante des écoles de l'imagination. Jamais poète n'a interprété la nature aussi librement qu'un juriste la réalité" (Giraudoux 1967, 133).[1] So it is not surprising that the history of reasonableness in law looks more like an exercise in poetry than a strict construction in logic. It follows a course in large part parallel to, but independent of, the course followed by the history of reasonableness in political philosophy.[2]

It must also be considered that biolaw is a new field, multifaceted, fluid, and unstable, and still drawing the suspicion of being inconsistent. And so there is no accuracy that reasonableness might be able to gain by being associated with biolaw.

A. Santosuosso (✉)
Faculty of Law, University of Pavia, Pavia, Italy
e-mail: amedeo.santosuosso@unipv.it

[1] Law is the most powerful of the schools of the imagination. Never has a poet interpreted nature more freely than a jurist has reality.

[2] As a philosophical concept, reasonableness should probably be considered as having been firmed up only with John Rawls's definition in Rawls (1971) and later works (on which point, see Richardson 2005).

G. Bongiovanni et al. (eds.), *Reasonableness and Law*, Law and Philosophy Library 86,
DOI 10.1007/978-1-4020-8500-0_17,