

**Giulio Ubertis**

# **Profiles of Judicial Epistemology**



**G. Giappichelli Editore**



**Nomos**

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## PREFACE

*The use of the expression Judicial Epistemology to define an independent field of research was originally presented for the first time in my book in 1979 focusing on *Fatto e valore nel Sistema probatorio penale* (Fact and value in the criminal evidence system). The volume was published with the support of Gian Domenico Pisapia, my unforgettable Mentor, despite the fact that the theme (then) appeared to many too new compared with the habitual scholarship at that time in the field of criminal procedure.*

*It was equally courageous of the publisher Giuffrè to accept my proposal to set up a Series of *Epistemologia giudiziaria* (Judicial Epistemology), the first volumes of which came out at the same time in 1997 thanks to Paolo Garbolino and Claudio Pizzi, two Colleagues who would continue to work on the Series and who have also become good friends as a result of countless discussions (frank and at times rather animated) with a view to channelling our specific backgrounds into the formation of a genuinely interdisciplinary vision, identifying the prospects for bringing together aspects of logical-philosophical profiles and the judicial ones of the various questions.*

*Finally, in 2014-2015, the Faculty of Law at the Università Cattolica del Sacro Cuore of Milano set up and entrusted to me the first courses of Judicial Epistemology in Italy (and not only Italy), also coordinating it with the courses in procedural law taught in the same Faculty: the issues raised by the subject, do not in fact solely pertain to the field of criminal procedure (my original background and which I continue to study), but also deal with civil and administrative processes, which are indeed frequently mentioned in the course of the following pages.*

*To all of these (University, Colleagues, Publisher), I can only publicly express my warmest gratitude for having made it possible for me (within the evident limitations of my capabilities) to engage in scholarship and also teach a discipline which fills me with such enthusiasm and the further study of which I firmly believe to be essential for the proper administration of justice.*

*It is also the desire to express this gratitude which spurred me to bring together here all my reflections on the topic, in an attempt to put some order on what had been discussed on other occasions as well as to make some fresh observations.*

*At times however (perhaps too often), the enthusiasm for work detracts too much time from family life. Without in any way using this as some sort of a justification (which would in any case be impossible), my deepest heartfelt thanks for having put up with me (and supported me) over the years go to my family, and above all, to my wife Paola whose love fills up my life.*

September 2014

Giulio Ubertis

## ABBREVIATIONS

Admin. Proc. Cod.	Code of Administrative Procedure
Agg.	Aggiornamento
<i>Ann.</i>	Annali
App.	Court of appeal
<i>Arch. phil. droit</i>	Archives de philosophie du droit
art.	article
Cass.	Court of cassation
<i>Cass. pen.</i>	Cassazione penale
cf.	confront
CFREU	Charter of Fundamental Rights of the European Union
ch.	chapter
cit.	cited
Civ. Proc. Cod.	Code of Civil Procedure
Civ. Cod.	Civil Code
col.	column
Crim. Cod.	Criminal Code
Crim. Proc. Code	Code of Criminal Procedure
<i>Crit. dir.</i>	Critica del diritto
<i>D. disc. pen.</i>	Digesto delle discipline penalistiche
d.l.	decree-law
<i>Dir. pen. proc.</i>	Diritto penale e processo
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ed.	edited
<i>Enc. dir.</i>	Enciclopedia del diritto
<i>Enc. giur.</i>	Enciclopedia giuridica
EU	European Union
ff.	following
<i>Foro it.</i>	Foro italiano
<i>Giur. cost.</i>	Giurisprudenza costituzionale
<i>Giur. compl. cass. civ.</i>	Giurisprudenza completa della Corte suprema di cassazione – sezioni civili
<i>Giur. compl. cass. pen.</i>	Giurisprudenza completa della Corte suprema di cassazione – sezioni penali
<i>Giur. it.</i>	Giurisprudenza italiana

G.U.	Gazzetta Ufficiale della Repubblica italiana
ICCPR	International Covenant on Civil and Political Rights
id.	idem
l.	law
<i>Leg. pen.</i>	Legislazione penale
lett.	letter or letters
no.	number
<i>Nss.D.I.</i>	Novissimo digesto italiano
p.	page or pages
para.	paragraph or paragraphs
prog. prel.	progetto preliminare
Prot.	Protocol
<i>Quad. CSM</i>	Quaderni del Consiglio superiore della magistratura
<i>Quest. giust.</i>	Questione giustizia
<i>Rev. dr. inter. lég. comp.</i>	Revue de droit international et de législation comparée
<i>Rev. intern. phil.</i>	Revue internationale de philosophie
RIFD	Rivista internazionale di filosofia del diritto
<i>Riv. crit. sc. soc.</i>	Rivista critica di scienze sociali
<i>Riv. dir. civ.</i>	Rivista di diritto civile
<i>Riv. dir. proc.</i>	Rivista di diritto processuale
<i>Riv. it. dir. proc. pen.</i>	Rivista italiana di diritto e procedura penale
<i>Riv. trim. dir. proc. civ.</i>	Rivista trimestrale di diritto procedura civile
<i>Scuola pos.</i>	Scuola positiva
<i>Suppl. ord.</i>	Supplemento ordinario
v.	<i>versus</i>