The pull to international legal theory is stronger in the American culture of international law than in the European—both continental and British—tradition. Pierre-Marie Dupuy is one of those European scholars whose work and career contradict such an epistemic finding, for he combines excellence in the mastery of the main topics of international law—subjects, sources, responsibility in particular—and one of the most reflexive and theoretical scholarship that the Europeans of his generation have produced on international law. In that sense, Pierre Marie Dupuy has proved to be not only a generalist but also a theorist, a profile that has become scarce in the contemporary epistemic community of international law. Against the backdrop of a chronic anti-theoretical posture of many strands of the international legal scholarship, he has convinced his peers as well as the following generation of European international legal scholars—including the author of these lines—that advanced training in traditional questions of international law is not exclusive of critical theoretical reflections on the concept of international law itself. He has simultaneously contributed to show to the world community of international legal scholars that European international legal scholars are not only positivists

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who study international law as it is but that they can also be theorists that study what international law is.2

It is argued here that Pierre-Marie Dupuy’s critical depth and insights on the concept of international law has nowhere been more conspicuous than in his numerous and rich studies of the question of the sources of international law. Indeed, Pierre-Marie Dupuy’s engagement with the theory of sources has delivered unparalleled critical knowledge and reflection about how to cognize and make sense of international law as a whole. That his studies on the sources of international law are those that bespeak the best of his concept(ion) of international law is not surprising, for Pierre-Marie Dupuy has always elevated the theory of sources of international law into the corner stone of the (cognition of the) international legal system.

From a European perspective, the systemic centrality of the theory of sources found in the work of Pierre-Marie Dupuy is certainly not outlandish. On the contrary, it corresponds to a common trait in the European tradition of international law. The attachment to the instrumentality of the sources in the existence of international law itself can be considered as the common denominator of the—otherwise very heterogeneous—European doctrinal approach to international law. There are few European legal scholars that would let themselves be lured by the temptations to move away from constraining questions of sources which are witnessed in other parts of the world.3 In the European tradition, sources, rather than processes or subjecthood, constitute the primary tool to cognize international law.

Although the European tradition of international law has always preserved the foundational role of the theory of sources of international law, very few European scholars have insightfully and reflexively made the case for the centrality of the theory of sources, both as the main identifier of the international law as well as the frontier-determiner of the discipline that has made international law its main object of study. For the author of these lines, Pierre-Marie Dupuy has distinguished himself by backing away from the general indifference towards the foundations of the theory of sources, which have been espoused sometimes either by default or by virtue of uncritical dogmatism by many of his peers, and by offering one of the most elaborated and self-reflective understandings of the sources of international law.

This chapter discusses the place and the foundations of the theory of sources in the European tradition of international law, with an emphasis on the work of Pierre-Marie Dupuy. It starts by recalling how the theory of sources grew into the

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2 See the famous distinction drawn by Salmond between those seeking to study what the law is and those who pursue the study of what is law. See J.W. Salmond, First Principles of Jurisprudence, London, Stevens and Haynes, 1893, 1.