

EDITORIAL: THE JURISPRUDENCE OF TORTS

Law students are often told that controversy only arises at the periphery of law. Most cases of murder, for example, are questions of fact, not law. Only when we consider extraordinary cases, like the separation of Siamese twins,¹ or doctor assisted suicide, do we consider more basic question on the construction of law. The same could be said about the law of torts. The law of wrongs has a varied and interesting heritage stretching back to Roman law, yet, the history of torts is not frequently cited in cases of negligence or duty of care. Yet, in assembling this issue, we have brought together eminent thinkers to engage with the question of torts, as a whole, not just in specific fact-based cases.

The young scholar Jonathan Blackmore of Shepard Broad Law Centre, Nova Southeastern University introduces us to the use of the writings of Franz Kafka in the American case law. Particularly, he engages with cases that use (and misuse) the term Kafkaesque. His insightful article gives us insight not into the *ratio* of modern case law, but the legal voice that has emerged from popular literature. It is with pleasure that we publish *The Influence of Franz Kafka on American Jurisprudence*.

Ms. Brooke Glass-O'Shea of the University of Southern California writes for us on cultural claims in American courts. From the 'thin skull' principle to various other (and sometimes absurd) civil claims, she enlightens us to how membership in a minority group has been grounds for additional damages in courts. Ms. Glass-O'Shea has produced an article worthy of our praise it is an honour to include *The Cultural Offense: How and Why Plaintiffs Bring Cultural Claims To Court* in this fourth edition of *Jurisprudence*.

Mr Joshua Masters of New York University is a truly innovative scholar, a growing leader in his field who writes on the topic of rational choice theory in law. Few lawyers find the opportunity to engage with macro questions and Mr Masters has skilfully and elegantly elucidated an original theory of rational choice in legal decision making. I have no doubt that this article will be of importance to generations to come.

Associate Professor Robert L. McFarland writes on the teaching of the law of wrongs in American law schools. Professor McFarland brings the insights of a dedicated legal educator, but also from a religious perspective, for he teaches at the Faulkner University. A Christian educator, just like his colleague Associate

¹ See, e.g., *Re A (Children) (Conjoined Twins: Surgical Separation)* [2000] 4 All ER 961.

Professor Adam McLeod who wrote in the first edition of *Jurisprudence*, Professor McFarland brings a genuine passion about legal education to his article *Teaching the Law of Wrongs without Searching for What is Right*. The depth of jurisprudential scholarship by Professors McFarland and MacLeod clearly positions Faulkner University among the burgeoning centres of contemporary, passionate jurisprudential scholarship.

Finally, this is the fourth edition of *Jurisprudence* and, therefore, one year since our first publication. The journal has grown leaps and bound in this short time. Everyday, I wake up to an inbox filled with the most exciting legal scholarship from every corner of the globe. In the next issue, we will engage with question of religion and jurisprudence. For 2010, we have the honour of Dr.Jur. Eric Engle and Mr Richard Mullender to each guest edit an edition.

Aron Ping D'Souza
Editor

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