

EDITORIAL: WHAT IS LAW?

The study of jurisprudence in modern legal academia is a challenge. As law schools throughout the world became more vocationally orientated, particularly due to the pressures of government funding, the place of theory is now a distant second to practical pedagogy. This trend is disconcerting because theory is the foundation of practical application; it is the light illuminating the dark tunnel. I have always believed that theory unveils the patterns of everyday life.

The Journal Jurisprudence was constituted to enliven theoretical debates within the law. In setting the question, “What is Law?,” as the theme for this inaugural edition, we challenged scholars and practitioners alike to be reflexive about the nature of law itself. “What is Law” is, of course, HLA Hart’s primary question; but it is also the primary question of the whole discipline of law. Unlike the sciences, law, in my opinion, does not exist *sui iuris*, that is, in its own right. Human beings or, more precisely, human societies create law within purposeful history. Law has utility, but to discover that utility request a delimitation of its boundaries. I hope this inaugural

edition spurs debate and contributes to the discourse.

Our first article is by Associate Professor Adam J. MacLeod of the Jones School of Law at Faulkner University. He conceives of law like the bards of history; law has narrative, like a story, but it also imparts values, instructions and cultures norms upon the audience/citizenry. Professor MacLeod imparts great scholarship upon his argument, but with a form of writing that makes his article accessible to a wide audience. Like the bards of yore, Professor MacLeod poses the skill to elucidate a narrative but also integrate a moral to his story. One of the primary missions of the Journal is to make legal writing accessible to non-lawyers/scholars, and *The Law as Bard: Extolling a Culture’s Virtues, Exposing its Vices, and Telling its Story* does this admirably.

Dr.Jur. Eric Engle of the Universität Bremen offers a breathtakingly original engagement with the definition of law. He balances the notion of *lex* (law) and *ius* (justice) with a functionalist framework to deliver “general principles of law.”

Furthermore, he foregrounds the juncture between the civil and common law to illuminate his discussions on freedom and justice. He concludes by challenging the death of universal morality through historical and theoretical examination. Dr Engle's conclusions are of immense importance to the discourse and, I am certain, would challenge the preconceptions of scholars and students alike. To suggest that some principles transcend all cultural boundaries has become increasingly untenable in a post-modern age, but *Law: Lex vs. Ius* begs to differ due to materialism.

Our third article engages directly with the work of HLA Hart, particularly in regards to public international law (PIL). Written by Dr Jason A. Beckett of the University of Leicester, who challenges us to reconceive of British positivism as a bifurcated debate. He suggests that the two major traditions, Hart and Austin, are both, in fact, inappropriate to the analysis of public international law. Dr Beckett is a bold and unforgiving

writer; he openly states, quite simply, "Hart was wrong" and demands a re-conception of judicial discretion. Building upon Foucault and Kierkegaard, he concludes that paradigm of legal theory is identified by its own banality. He find more truth in public international law as a legal system, as opposed to Hart's rather "municipal" definition of law.

Journal editors often suggest that accepting articles, like a professor awarding a first class degree, is with great difficulty given the vast choice we are presented with. Since calling for articles in early 2008 and closing mid-year, we received nearly forty submissions. But it was without significant difficulty to present only three because they engaged with the theme in a manner intelligible to those outside the academy. This issue's diverse trio of authors cleared a path that I hope many will follow.

Aron Ping D'Souza
Editor
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