

EDITORIAL: LEGAL HISTORIES

Morton Horwitz of the Harvard Law School famously asked "Why is Anglo-American jurisprudence unhistorical?" in the *Oxford Journal of Legal Studies* in 1997.¹ His claim was not that all Anglo-American jurisprudence was detached from historical fact, but that analytical jurisprudence, particularly of the Hartian tradition, ruled out history as a legitimate source of authority. This, he said, was a response to the historicist value of relativist philosophy.

H.L.A. Hart is well established as the father of modern jurisprudence, at least in the Anglo-American tradition, and his positive approach to legal reasoning, aspiring towards a general theory of jurisprudence, was inherently ahistorical. The unhistorical nature of Hart's work was groundbreaking and was a necessary pre-requisite for his separability thesis.

Hart's notion that law was somehow distinct from morality has been challenged since its publication, most notably by John Finnis. The value of this edition is to highlight the importance of history to legal scholarship. Our trio of authors interact with the living history of law and show how historical events have formed the lifeblood of modern legal thinking. I believe the articles of this edition provide a substantial critique of the notion that jurisprudence can be unhistorical.

Isaac Colunga, who was previously Law Clerk to the Honorable Charles R. Norgle of the U.S. District Court for the Northern District of Illinois and now is in private practice with Ice Miller LLP, dissects ancient Rome's treason laws and how they evolved through Roman history and have been subject to misinterpretation. Mr Colunga's strength is to show us that even in ancient law, there is still scope for original inquiry.

It has been said that the corporation is the dominate form of social organisation in the modern world. George Skouras of the New School for Social Research gives us insight into the formation of corporations, particularly under the Fuller Supreme Court. Using the jurisprudence of the Fuller Court, Skouras shows us how the contemporary American corporatist state emerged and illustrates the connection to the current financial climate. Mr Skouras is a talented author and his article is of importance to current events and will have, I am sure, impact in both academic and professional debates.

¹ (1997) 17(4): 551-586.

Scott Hamilton Dewey of UCLA tells about the history of the common law's essence, the doctrine of *stare decisis*. Using the state of Illinois as an example, he examined hundreds of cases dating back from 1876 relating to the concept of antagonistic defenses. Dr Dewey's detailed research has broken new ground, and inspires critical reflection on presumption of *stare decisis* granting both legal and linguistic certainty to courts. *The Journal Jurisprudence* is very pleased be able to share *How Judges Don't Think: The Inadvertent Misuse of Precedent in the Strange Career of the Illinois Doctrine of Antagonistic Defenses, 1876-1986* with our global readership.

I am certain that the articles in this issue show that legal history is a thriving field of enquiry, and has genuine relevance to jurisprudential debates. Personally, I am honored to have worked with our contributors in delivering this ninth issue of *Jurisprudence*.

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