

The Canadian Journal of Law & Jurisprudence

An International Journal of Legal Thought

Editors: Richard Bronaugh & Peter Barton

James Allan

Positively Fabulous:

Why It Is Good To Be a Legal Positivist

Mark Warren Bailey

Moral Philosophy,

the United States Supreme Court, and the

Nation's Character, 1860-1910

Jay Conison

The Pragmatics of Promise

Catherine Dauvergne

Beyond Justice: The Consequences of Liberalism for Immigration Law

Joseph Heath

Immigration, Multiculturalism, and the Social Contract

Michael David Jordan
Itzhak Kugler

Parents' Rights and Children's Interests

Don E. Scheid

On the Possibility of a Criminal Law Defence for Conscientious Objection

Thomas W. Simon

Constructing a Theory of Punishment, Desert, and the Distribution of Punishments

Critical Notice
Hilliard Aronovitch

Minorities In International Law

A Liberal Reading of the American Constitution

Freedom's Law: The Moral Reading of the American Constitution by Ronald Dworkin

Volume X, Number 2

July 1997



L . J

TABLE OF CONTENTS

James Alian	Why It Is Good To Be a Legal Positivist	231
Mark Warren Bailey	Moral Philosophy, the United States Supreme Court, and the Nation's Character, 1860-1910	249
Jay Conison	The Pragmatics of Promise	273
Catherine Dauvergne	Beyond Justice: The Consequences of Liberalism for Immigration Law	323
Joseph Heath	Immigration, Multiculturalism, and the Social Contract	343
Michael David Jordan	Parents' Rights and Children's Interests	363
Itzhak Kugler	On the Possibility of a Criminal Law Defence for Conscientious Objection	387
Don E. Scheid	Constructing a Theory of Punishment, Desert, and the Distribution of Punishments	441
Thomas W. Simon	Minorities In International Law	507
Critical Notice		
Hilliard Aronovitch	A Liberal Reading of the American Constitution Freedom's Law: The Moral Reading of the American Constitution by Ronald Dworkin	521
	Announcements	536

Faculty of Law University of Western Ontario London, Ontario Canada

Volume X, Number 2

alis volat propriis

July 1997

Editors

P.G. Barton R.N. Bronaugh

Consulting Editors

Anne Bayefsky
Jerome Bickenbach
Alan Brudner
Bruce Chapman
David Dyzenhaus
Leslie Green
Michael Hartney
Barry Hoffmaster
Michael Milde
Dennis M. Patterson
Stephen Perry
Denise Réaume
Wil Waluchow

Student Editors

Brian Robert Hilbers Mark Joseph

French Language Editor

Michael Hartney

Business Manager

Nanette Love/ Amy Jacob **James Allan** (B.A., LL.B., Queen's (Canada); LL.M., London School of Economics; Ph.D., Hong Kong, 1995) is a Senior Lecturer in Law at Otago University in New Zealand. His book *A Sceptical Theory of Morality and Law* is forthcoming at the end of 1997.

Hilliard Aronovitch (B.A., McGill; Ph.D., Brandeis, 1977) is Associate Professor of Philosophy at the University of Ottawa. He has recently published articles in the journals Political Studies and Inquiry.

Mark Warren Bailey (B.A., Toronto; M.A., Waterloo; Ph.D., Western Ontario, 1996) is a liberal arts Instructor at the Labrador West Campus of the College of the North Atlantic. He is interested in the relationship between Protestant theology, moral philosophy, and American legal theory.

Jay Conison (B.A., Yale; M.A. and J.D., Minnesota, 1981) is Dean of the Law School and Professor of Law, Oklahoma City University. He writes mainly on employee benefit plan law and jurisprudence.

Catherine Dauvergne (B.A., M.A., Carleton; LL.B., British Columbia, 1995) is a Ph.D. candidate in the Faculty of Law at the Australian National University. Her research addresses the role of contemporary immigration law in the construction of national identities in Canada and Australia. Email: catherine.dauvergne@anu.edu.au

Joseph Heath (B.A., McGill; M.A. and Ph.D., Northwestern, 1995) is Assistant Professor of Philosophy at Erindale College, University of Toronto.

Michael David Jordan (B.A., Manchester; M.A., Georgia, 1996) is a residence life counsellor at Interlochen Center for the Arts. He works in the areas of children's rights and political and legal philosophy generally. Email: jordanmd@interlochen.k12.mi.us

Itzhak Kugler (LL.B. and LL.D, the Hebrew University of Jerusalem, 1994) is a lecturer in the criminal law at the Faculty of Law at the Hebrew University of Jerusalem. In the academic year 1996-97 he was a Fulbright Visiting Scholar at the Law School of the University of Pennsylvania. He is working on the mental element in crime.

Don E. Scheid (B.A., Colorado College; M.A., Utah; Ph.D., New York University; J.D., Utah, 1984) is Professor of Philosophy at Winona State University in Minnesota. His main interests are in moral philosophy and the philosophy of criminal law. Email: descheid@vax2.winona.msus.edu

Thomas W. Simon (B.A., St. Lawrence; Ph.D., Washington University; J.D., University of Illinois College of Law, 1991) is Professor of Philosophy at Illinois State University at Normal. He is the author of *Democracy and Social Injustice* and editor of the forthcoming *Law's Philosophies*. Email: twsimon@rs6000.cmp. ilstu.edu