

## BOOK REVIEWS

***Sean Coyle and George Pavlakos (eds.), Jurisprudence or Legal Science? A Debate about the Nature of Legal Theory. (Oxford, Hart Publishing, 2005, 174 pages (inc. index) ISBN 1-84113-504-6).***

*Jurisprudence or Legal Science?* is a collection of contributions first presented at the “Workshop in Analytical Jurisprudence” held on 25-26 October 2002 at Queen’s University of Belfast. The specific question addressed by the papers contained in this volume is whether legal theory should be conceived of as an analysis aimed at clarifying the broad conceptual framework within which legal practice takes place (legal theory as legal science) or as a study engaging directly with the doctrinal debates which are of immediate concern for legal practitioners (legal theory as jurisprudence). A number of differences set the two enterprises apart. Legal science is a highly general and abstract form of conceptual analysis which aims at neutrality, austerity, detachment and objectivity; jurisprudence is an engaged project which assumes the unavailability of value-free explanations of law and so takes a position on the basic values that govern legal practices. Moreover, legal science is concerned with the nature of law in general; jurisprudence assumes that we cannot fruitfully reflect on the *general* characteristics of *law* but only on the *context-dependent* features of *given legal systems*.

If we focus on this last opposition (legal theory as a study of the nature of law versus legal theory as a situated enquiry of specific legal practices) we are in the best condition to both have a full grasp of the dilemma dealt with in *Jurisprudence or Legal Science?* and appreciate the originality of the contributions comprised in this volume. For, the essays in the volume can be roughly classified as either attempts to defend the ambitious thesis that a general philosophical enquiry into law’s nature is not only possible but also desirable or arguments for the impossibility of legal science.

The main assumptions underlying the more ambitious project are discussed by Jonathan Gorman and Carsten Heidemann. Gorman establishes a link between theoretical enquiry about law, on the one hand, and the concepts of truth, knowledge and understanding, on the other. On this view, we cannot grasp the structure and scope of legal theory unless we have a wider-ranging account of the notion of truth and knowledge. Heidemann, who discusses in detail Alexy’s version of the currently widespread view that legal systems raise a claim to correctness, connects the possibility of legal science to the cognitive status of legal norms. On his view, normativity, objectivity and mind-independence are all closely connected issues. If we follow Gorman and Heidemann, thus, we should conclude that when it is conceived of as a legal science, legal theory is open to the influences coming from the theory of truth, epistemology, ontology and theory of mind. As a result, legal theory is a truly philosophical enterprise.

This philosophical depth of legal theory is further explored and clarified by George Pavlakos, Veronica Rodriguez-Blanco and Robert Alexy. Pavlakos

argues for an idea of legal knowledge shaped by the thesis that normative properties are perceiver-dependant but nonetheless objective qualities of things. This approach, which is neither a kind of empiricism nor a form of essentialism, depicts legal knowledge as a rationalist normative activity, *i.e.* an interpretative process addressing entities provided with both an *a priori* component and an *a posteriori* component. Rodriguez-Blanco defends the possibility of legal science by means of a discussion of the metaphysical commitments of conceptual analysis. *Contra* Dworkin's criticism of Archimedeanism, Rodriguez-Blanco argues for the relevance of metaphysics in legal theory: far from consisting exclusively in debates on substantive questions the theory of law is profoundly concerned with metaphysical issues. Finally, Alexy states in the clearest possible way that the theoretical enquiry into law should be understood as a chapter of general philosophy. Philosophy is a "general and systematic reflection about what there is, what ought to be done or is good, and how knowledge about both is possible" (page 51). Legal theory raises the same questions although with respect to the more limited domain of law. Hence, it comprises four basic dimensions: a critical dimension, a normative dimension, an analytic dimension and a synthetic dimension. A careful exploration of all these dimensions will disclose the fundamental characteristics of law to us. As a result, a direct connection can be established between legal theory and nature of law: the very nature of law will progressively become apparent as we progress in our legal-theoretical studies.

For different reasons this conclusion is unwelcome by Philip Leith, John Morison and Sean Coyle. In their joint contribution Leith and Morison restate the importance of the anti-formalist critique of analytical legal theory, which is recognised to be both mistaken and exceedingly narrow in scope. For these reasons, analytical legal theory is constitutively unable to grasp the most important dimensions and transformations of the legal phenomenon such as the actual use of legal standards by practitioners and the passage from government to governance for example. This approach entails also a re-evaluation of empiricism: a scientific approach in legal theory requires us to undertake empirical studies into the practice of law. Accordingly, legal theory falls short of being a science as long as it aims at exploring the nature of law. To put it in a slogan, jurisprudence, not legal science, is the genuinely scientific approach to law. A preference for jurisprudence is also expressed by Coyle though on rather different theoretical grounds. On Coyle's view "the search for necessary or foundational truth in the context of law is itself misconceived" (page 22). There is nothing necessary in the concept of law since legal systems are historical and contingent products that reflect specific political and social conditions. Consequently even general theoretical approaches to law, such as Hart's for example, are better interpreted as attempts to elucidate the distinctive features of a legal system in a given historical period rather than as efforts to account for the universal and eternal properties of law. The argument for a deflationary approach to legal theory that Coyle deploys in his contribution is sophisticated and forceful. However, it ultimately leaves open the possibility for legal science. As long as comparative legal-theoretical studies are conceivable we cannot do without a comprehensive concept of law, namely an overarching idea that accounts for, but at the same time transcends, the basic characteristics of the specific historical experiences. For, in the absence of such an all-compassing category we would not be able to recognise the particular legal experiences

as different species of a same *genus*. They would rather appear to us as different kinds altogether between which no comparison can sensibly obtain. Comparative jurisprudence, then, requires a general account of law. In turn by hypothesis this general account can be provided by legal science only. As a consequence, far from being ruled out legal science is ultimately called for by jurisprudence itself.

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***A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571-1641* by Dr. Jon G. Crawford (Four Courts Press, 2005. Illustrated hardback, 672 pages, £65.00)**

As the first monograph written on the subject of the Court of Castle Chamber *A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571-1641* by Dr. Jon G. Crawford, who is the Director of International Education at Roanoke College in Salem, Virginia, represents a significant contribution to our knowledge of the institution, as well as to the individuals and events surrounding the Court. The work follows Dr. Crawford's extensive interest and unparalleled expertise in the area, chiefly embodied in "The Origins of The Court Of Castle Chamber; A Star Chamber Jurisdiction In Ireland", *American Journal Of Legal History*, 24 (1980) 22-55 and *Anglicising the Government of Ireland: the Irish Privy Council and the Expansion of Tudor Rule, 1556-1578* (1993), and is as scrupulous in its detail as it is complete in its coverage of the machinery of the court that was the counterpart of the English Star Chamber.

*A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571-1641* embraces the history of the Court, from its incipient prefiguration as the result of frustrated Henrician and Elizabethan reforms in the 1530s and again in the 1560s, to its proper establishment under Sir Henry Sydney in 1571, and then its shifting fortunes under consecutive Irish chief governors from Sydney's first successor Sir William Fitzwilliam to the final chief governor of the period Sir Thomas Wentworth. The character of the regimes of the other great viceroys like Sir Arthur Chichester (in particular, here, how the Court was utilised to prosecute cases of recusancy), as well as the associated administrations of other key figures such as Archbishop Adam Loftus and Attorney-General Sir John Davies are analysed in point, with their political context meticulously elucidated.

The author adroitly and elegantly demonstrates the emergence of the Court of Castle Chamber as an autonomous institution, and how this emergence came about against an environment of colonisation and rapid social change, and also one of busy if not entirely planned structural ordering. Equally Dr. Crawford shows, via the recorded examples of Castle Chamber cases, a drift away from a concentration on riot and violence focussed activities and towards a more miscellaneous and sophisticated jurisdiction. As the Monarch's peace was varyingly implemented, the regulation of a new range of legal concerns fell to the Court. From the litigants' perspective, the

plasticity of Castle Chamber's jurisdiction meant that a case which had little chance of being heard in the common law courts might more easily be brought before the Castle Chamber. There is clear evidence laid before the reader of the Court's systematic and ordered procedure. However, while Dr Crawford maintains the documented record of the Court confirms that it had become a tribunal that was keenly sought by litigants from all the regions of Ireland and from all religious and social groups, it is apparent that like other courts comparatively few of the community had genuine access to the Castle Chamber. It is plain that characteristics of prestige, wealth, masculinity and primogeniture were common to that element of the populace who can be shown to be associated, in some way, with the Court.

The final years of the Court, encompassing the period of the so-called Absolutism of Lord Deputy Wentworth (later the Earl of Strafford) from 1633 until 1638, and its end (including the impeachment and execution of Wentworth himself, and the breakdown of government in Ireland) from 1638 until 1641, are covered with apposite detail substantiating the opinion that in these years the Court of Castle Chamber was indeed utilised by the viceroy as an instrument of arbitrary power and political intimidation. By the end of this period, amid the general tumult, the Court receded and then vanished from operational activity – not so much with a bang as with nary even a whimper.

Across the water, in November of 1640, desperate and destitute Charles I had summoned Parliament and bent to its demands in exchange for the tender of supply. After the most immediate concerns of the Parliament's own life and fund raising methods had been addressed, the sights of the Commons turned upon the organs through which the King had applied his non-parliamentary government. The Commons established a committee to reform the Star Chamber, and two reform bills were considered, before it was reported to the House by Edmund Prideaux on the last day of May, 1641, that abolition was the sole option. Slight opposition to the measure was quickly quelled by Simonds D'Ewes. The bill for the abolition of Star Chamber, and most of the rest of the conciliar courts' jurisdictions, was passed and gained the assent of the defeated Charles on 5th July, 1641. The Star Chamber Abolition Act, 16 Car.I c.10, made no mention of the Court of Castle Chamber, nor indeed of any matter to do with the governance of Ireland. As noted by Dr. Crawford, the English Parliament did not interfere with Irish affairs until the crises of the 1640s. It is interesting to observe, all the same, that the absence of the Star Chamber by no means meant the end in England of political trials such as that of Prynne. Prior to its appropriation of power the Parliament had already established its own "star chamber" in the Committee for Examinations and Parliamentary Justice (in relation to which see W. Epstein, "The Committee For Examinations And Parliamentary Justice", *Journal Of Legal History*, 7,1 (1986) 3-22). Indeed, in 1641 the jurisdiction exercised by the Star Chamber was taken up by the court of King's Bench – with no real sense of recalcitrance.

It is important to call attention to a very important feature of the work, namely in the author's inclusion of extensive appendices. Because *A Star Chamber Court in Ireland* is the pioneering work on the topic of the Court, it is entirely appropriate for the author to have incorporated such wide-ranging source materials in this way. The appendices are four in number (although with internal sub-division within that number), and total some 168 pages

(mostly in a smaller than normal point size). The greatest part of the appendices, Appendix 1, is a transcription of British Library Additional MS 47, 172 being the entry book of orders and decrees of the Court of Castle Chamber from 1571 to 1621. The material represents the largest collection of the Court's functioning in its most raw form, and embodies the most substantial archival information available to scholars of the topic. Although the entry book of orders and decrees of the Court ends in 1621, Appendix 2 takes up the record, drawn now from Trinity College Dublin MS 852, for the years 1621-1632. Also from TCD MS 852, and reproduced in Appendix 3, is the Royal Commission of the Court of Castle Chamber of 1625. Appendix 4, extracted from various manuscript sources, details petitions and cases relating to the Court in its final years during the 1630s under the tenure of Thomas Wentworth as Lord Deputy. These appendices might indeed have formed a work on their own, so important is their substance, but here form an appropriate complement to the author's preceding work of historical interpretation and synthesis. The exertion of the Dr. Crawford in compiling and presenting the unprocessed materials of research in this way is an outstanding service to other scholars, and it is exciting to see the matter so exposed because there is still so much which can be wrought from these raw materials.

Other matters, relating to the form of *A Star Chamber Court in Ireland*, include a particularly thorough and extremely useful bibliography, which is suitably and conveniently divided into the major categories of sources. There is also, naturally, an index - which somewhat less helpfully seems to focus heavily upon the names of individual players and less heavily on institutional, procedural, thematic or conceptual issues. The volume, some 672 pages *in toto*, is published in a solid hardback by the Four Courts Press in association with The Irish Legal History Society. It is covered, handsomely, by a jacket incorporating a photograph of the seal of Lord Deputy Wentworth. This photograph is also reproduced in the fly leaves, and is sourced to Marsh's Library, Dublin, MS Z.3.2.6, item 109, p. 305. On the subject of illustration, the volume also contains sixteen plates, in black and white, each with commentary. The plates show many of the key actors in the Court's story - either in portraiture or in funereal effigy, some of the architecture and geography relevant to the Court, as well as an extract from each of BL Add MS 47, 172 and TCD MS 852.

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