Book Symposium

The Vantage of Law: Author's Introduction

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It has been a delight, a stimulating and fortunate delight, to have been a member of the ASLP since arriving here in Australia at the start of 2005. During that time I have had first-hand experience of the wonderful yearly conferences laid on by the ASLP and also been able to look forward each year to receiving and reading the society's excellent journal, the *Australian Journal of Legal Philosophy*.

The fact that last year the ASLP chose to make my book the subject of its 2012 book symposium at the yearly conference was an honour for which I am most grateful. So I start by thanking all those involved with the ASLP and the *AJLP*.

A more particular thanks is due to the three commentators who took the time, and expended the effort, to read my book carefully and to enlighten both those present at the 2012 symposium and those reading this issue of the *AJLP* with their insights, comments and points of disagreement with me. Diverging premises, opposing exegetical analyses and differing first order sentiments are only to be expected in a subject such as legal philosophy. Indeed, it is the back-and-forth of different views and positions that moves the subject forward, and makes it anything other than dull.

So I especially wish to thank Denise Meyerson, Leighton McDonald and Michael Stokes for their perceptive comments. In the limited space afforded me I will pick up some of the main points they raise and offer up my responses. I hope that our disagreements prove to be thought-provoking to readers.

I wrote this book in part because I very much like H L A Hart's *The Concept of Law*, because I do not agree with many of the recent takes on Hart (and that includes a dislike of the whole notion of placing much weight on a 2nd edition postscript and writings that Hart himself never sought to publish and which was in effect reconstructed) and because I think that Hart may have undersold the reasons for separating law and morality. In brief, I think that Hart was right in chapter nine but that he needed to say more, to tell us that the main consequentialist benefit for keeping them separate is to limit the power at the point-of-application of law — though of

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course in 1961 in the United Kingdom with its then undiluted parliamentary sovereignty this was not apparent.

From there the other two themes of the book followed more or less on their own given my other interests. These were the role of judges and judging and bills of rights. So those latter two topics, with the initial one of why we might want to separate law and morality, are the core of the book. I think they are all inter-related.

That said, I tried to write about these topics in a fresh way. And I consciously mimicked Hart in forswearing endless footnotes. Moreover, I aimed to avoid and shun all the labels that blight so much of legal philosophy these days. If we had to play the 'think by assigning labels game' then my views would probably fall most closely into what David Dyzenhaus and Tom Campbell dub 'democratic legal positivism', a branch of 'normative positivism'. Indeed that is how Dyzenhaus specifically does label my views.

Yet in my opinion the labels are all problematic and so I chose to eschew them almost completely. I was hoping in my book to keep the reader's interest, avoid the near-scholastic arguing over labels, and get back to core issues. Hence on the topic of whether it is preferable to keep separate law and morality, right at the start of my chapter one I went back to Bentham and his eminently practical goal of keeping them separate in order to reform law and make it better. Hart's more conceptual way of putting it — are there any necessary connections? — obscures this, though Hart in the end, I think, answers his own question in terms of there being good consequences in keeping them separate, which is really in a way to answer the older Benthamite queries.