

FOREWORD (PUBLIC LAW)

Professor Paul Craig

Professor of English Law, St John's College, Oxford

Legal reasoning is foundational to the study of law at university. It is central to the legal education undertaken by law undergraduates during their three years or more at University. The skills in this respect are what you learn during your University years, and it is what we, the academic community, attempt to imbibe, through lectures, tutorials, seminars and our own legal writing. This understanding of legal reasoning is key, irrespective of the subject matter being studied. It is equally important in the context of contract and constitutional law, tort and administrative law, and land law and EU law, or indeed any other subject that is part of the law syllabus.

Skills in terms of legal reasoning play out in the determination and assessment of the positive law, the identification of what the law actually is on any particular topic. This may well require analysis of various primary sources, including statute, treaty provision, secondary legislation, codes and case law. The inter-relation between these discrete elements is itself an expertise honed over time. We can all look back with an admixture of amusement and humility at our first efforts to read a statute, or a complex judgment of the Supreme Court or Court of Appeal. It is a testimony to the learning capacity of university law students how these skills develop expeditiously, such that the sophistication that is brought to bear on University exams towards the end of the first year are unrecognizable as compared to those that existed but six months earlier. This learning curve continues to rise over time, the trajectory bearing testimony to the growing ease with the materials.

Legal reasoning is not, however, confined to discernment of the positive law. It is equally significant in the assessment of the normative dimension of legal study. Law is properly regarded as falling within the social sciences. There is a policy underlying every legal rule. There are values that underpin all legal norms. Understanding of the positive law is but the first step in evaluating the end product. The good lawyer should always be cognizant of this and bring a critical eye to the statute, case law or any other legal norm. The policy may be readily discernible, or it may, by way of contrast, be opaque. The values that the legal rule seeks to serve may be readily identifiable, and unitary, or they may be plural and contestable. This is but the start of the normative inquiry, not the end thereof. The good lawyer may need to test provisional conclusions against the purposes and values served by other legal rules in closely linked terrain, in order to assess the fit between the two.

The skills adumbrated above are fashioned over the entirety of a person's legal career. Hackneyed although it may sound, lawyers never stop learning. I vividly recall my initial years as an academic, when a senior colleague told me that I would, in time, develop a 'feel for my subject'. I had no idea what that meant at the time, nor when it would happen, or indeed what it would mean. It did happen after the effluxion of some considerable time, but it was worth waiting for.

The Oxford University Undergraduate Law Journal is important in fashioning skills in legal reasoning. It is valuable for those undergraduates minded to undertake more extensive analysis of a legal problem than is capable of being done within the confines of a normal essay assignment, or even a longer term-length paper. It requires them to tackle the plethora of issues adumbrated above, including articulation of the legal status quo, identification of the normative values that are enshrined therein and critical evaluation thereof. It is entirely proper that law

undergraduates undertake such studies. They thereby enhance their legal skills, and contribute to the development of legal scholarship on the relevant topic. I have been impressed with the quality of the contributions that I have read, which display good knowledge of the primary and secondary literature in the relevant area, combined with perceptive insight as to the way in which the law should be developed hereafter. I wish the editors and contributors, present and future, well in their endeavours in this regard.