

## ADVANCED TOPICS IN JURISPRUDENCE

B. Leiter

Fall 2004

Mondays, 2:30-5:30

The course seeks to understand the connection between Hart's idea of "the internal point of view" in *The Concept of Law* and the ethical non-cognitivism which Hart took for granted. The aim is partly to understand Hart's philosophical motivations, partly to assess how ethical non-cognitivism figures in Hart's theory, and partly to assess the merits of Hart's position and, to a lesser extent (necessarily), of ethical non-cognitivism.

We shall proceed roughly as follows. We'll begin by looking at Scandinavian Legal Realism, which wanted to give a theoretical account of law purged of all normative concepts (rights, duties, obligations, etc.), since (under the influence of logical positivism) the Scandinavian Legal Realists thought these concepts were devoid of cognitive content, and so could have no place in a "science" of jurisprudence. Our focus will be mainly on Alf Ross, since it was Hart's response to Ross that laid the seeds for "the internal point of view." We'll look in detail at Hart's critique of the Scandinavians, and, in particular, his complaint that the Scandinavians were unable to distinguish between mindless and habitual patterns of social behavior and patterns of social behavior in which agents took themselves to be following rules, and thus to have reasons to do what they do—the latter (this "internal aspect" of rules), according to Hart, being a central feature of the social phenomenon of law.

Since Hart shared, it appears, the Scandinavian skepticism about the cognitive content of normative concepts, yet thought that it would be impossible to account for law without taking account of the respect in which agents took themselves to have "obligations" under law, he needed another way of conceiving the normative dimensions of law. This is where the then-orthodox ethical non-cognitivism—of Hare and Stevenson, in particular—was crucial for Hart: it allowed him to explicate the "internal aspect" of law, while remaining a skeptic about norms. Or, so at any rate, it seems.

We'll need to look at Hare and Stevenson, and then look at some more sophisticated ethical non-cognitivism (Blackburn and Gibbard are the most likely candidates) and perhaps also some critics, older and current (e.g., Foot, Brandt, Smith, Railton), to see whether Hart can make good on his alternative to Scandinavian Realism—and to see whether we can give a better theoretical account of the internal point of view (or, alternatively, whether we need such an account at all).

**Requirements:** Philosophy graduate students will write a paper. Law students will, after consultation with the instructor, either write a paper or complete a take-home essay exam.

**Prerequisites:** A substantial background in philosophy is required. Having studied Hart's *The Concept of Law* previously is helpful, but not essential—we will read significant portions of it in the course. If you have doubts about whether you have the

requisite background, please consult the instructor ([bleiter@mail.law.utexas.edu](mailto:bleiter@mail.law.utexas.edu) or 232-1319).

**Readings** will be from Scandinavian Realism (esp. Ross), Hart (both his essays and *The Concept of Law*), Raz, and some or all of Blackburn, Brandt, Foot, Gibbard, Hare, Holton, Railton, M. Smith, Stevenson, and perhaps others.