

Practical Applied Legal Theory

The Practical Applied Legal Theory project is an institutional attempt to establish a new approach to research recently established at Nottingham Trent University. Anybody interested in finding out more, or establishing personal or institutional links with the project, please contact Graham Ferris at: graham.ferris@ntu.ac.uk

This is a call for contributions to a new section of the Nottingham Law Journal. In part the idea is to provide a place for publications that might not fall easily within the conventional criteria for research publications, and yet represent valuable work that merits entrance into academic discourse. It is envisaged that pieces will generally be of relatively short length, up to around 4,000 words, although there is no absolute bar on longer pieces being considered. The criteria for inclusion in this section of the Journal are deliberately open textured. However, illustrative guidelines follow. If you are in doubt whether a project would be appropriate for inclusion please ask by e-mailing: graham.ferris@ntu.ac.uk

The application of legal theory (broadly defined) to teaching practice at Higher Educational level is one area of research that we hope to feature. There are several ways in which legal theory can inform teaching: as a selection tool when considering course content; as a guide to ordering the presentation of material selected; as a tool for analysing student difficulties with material; as a source of explanatory material; as a source for contextual material in the attempt to make material vital for students. The articulation of potential links between theoretical work, and the application of that work to everyday delivery of legal education, is far from simple. Far too often the process takes place purely within the consciousness of the course designers, and valuable insights are lost to the profession, to be reborn through individual efforts in another institution. It is our hope that the possibility of recognition and publication here might encourage some, including some who might not view themselves as “researchers”, to articulate the process of transmuting theoretical understanding into useable techniques and materials of legal education.

The theoretical consideration of practical legal insight is another area in which we hope to break some new ground. The human agents of the legal system: lawyers, state agencies, non-professional service providers, are a dynamic force in generating and moderating law. The apparent inability of some doctrinal work to incorporate the primacy of transactional avoidance of inconvenient law renders their work at times “theoretical” in a manner that is decidedly not practical. The inability of some lawyers to see the general importance of particular legal activity renders their work “practical” in a manner that is almost anti-theoretical. The attempt to generalise an understanding of legal practice finds it hard to locate a place for publication. Publications primarily directed towards practitioners may feel the generalisation irrelevant and distracting. More academic publications may find the anecdotal and particularised material indigestible, and request another six months work developing it for an academic audience. We welcome material that tries to build the link between what is done and what is pronounced as law. After all, some law is explicable by identifiable failures of legal teams in preparing and presenting cases to judges. It will never be useful to seek for the doctrinal reasons for such decisions, but it could be very useful, to educators, practitioners, and lawmakers to reflect upon the misfiring of the legal engine.

The application of legal theory to the solution of practical legal problems is another area of research we hope to feature. Approaches to doctrinal problems are always informed by some kind of theoretical position, whether it be conscious or not. There is a natural propensity amongst academics to elaborate upon Gordian knots, adding another strand of erudite commentary to knotty areas of law. At its most useful legal theory can provide simplifying conceptual blades for cutting through such knots. An approach that is informed by discourse at a higher level of generality can potentially provide the means for identifying the underlying issues that generate doctrinal knots. However, the process of analysing the doctrinal debate blow by blow is prolonged and fatiguing. We hope that work at a suggestive level can find a home in these pages, not demonstrating the correctness of the insight, but inviting consideration of insight as a working hypothesis that makes sense of the field for practical purposes today.

Finally, we welcome appreciations of theoretical work because it has been useful in some manner to the reader. There is a tendency for academic commentary to be destructively critical rather than appreciative. In a world of practical application it is not possible to await the discovery of the definitive and ultimate theoretical treatment, even if one believed in such a thing. Theory is often useful despite being limited, palpably wrong in places, not capable of generalisation outside of its favoured field, and underdeveloped. What we wish to encourage is accounts of how legal theory can be used, how it can help in solving problems of decision, or action. There are many works of theory of considerable age and hoary distinction that remain as useful today as when they were first composed. Forgetfulness of the old and attraction to the new seems to be a feature of modern society. We welcome publications reviewing material that is old but serviceable, focussed not upon weakness but strength of theoretical approaches. The first substantive publication in this section of the Journal will be of this type, reviewing the work of a jurist with an unenviable reputation for obscurity and difficulty among students, Hohfeld, and discovering a surprisingly useful and practical theoretician.