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Foreword

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As a prospective law student, I found the focus of this "Law &" Symposium to be a captivating and thought-provoking introduction to many of the issues I hope to come across in my legal career. The papers presented here cover an impressive range of interdisciplinary scholarship and incorporate both obscure and well-known applications of non-legal concepts to the study and practice of law. The perspectives provided by philosophical, linguistic, biological, psychological, and religious areas of study provide significant insights for solving legal problems. The interdisciplinary focus of this symposium not only demonstrates the extent to which law is influenced by other fields, but it also illustrates how these disciplines are shaped by the very law they affect. While legal scholarship is undoubtedly enhanced by the contributions of other disciplines, it becomes apparent from the work presented here that there also are many challenges associated with taking such an interdisciplinary approach.

Laws outline our rights and duties, and provide a means for seeking justice and maintaining order. These rights and duties cannot be fully defined, debated, and understood by merely examining legal doctrines alone; rather, a truly effective legal approach ought to account for the wisdom of other disciplines, thereby both better addressing underlying social concerns and exploiting methodologies that can help develop more innovative public policy. As University of Chicago professor Douglas G. Baird points out, "other disciplines give us the tool kit to understand how the law works in our world."[1] Modern and effective legal instruments must therefore emphasize the relationship between legal institutions and people, social conditions, and ideas. Professor Baird concludes, "We can understand the law

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1. Douglas G. Baird, *An Interdisciplinary Approach: Beyond Law and Economics*, UNIVERSITY OF CHICAGO LAW SCHOOL HEADNOTES, 1998–1999, *available at* http://www.law.uchicago.edu/prospective/headnotes/interdisciplinary.html (last visited Apr. 26, 2004).

only if we understand both how it affects the behavior of the society it governs and how it reflects the values its citizens have. For this reason, one cannot study law as if it were a self-contained world unto itself."[2] An interdisciplinary approach to law not only provides additional perspectives on multifaceted social concerns and broadens one's understanding of relevant non-legal factors, it also reveals the potential limitations of legal reasoning.

The "Law &" Symposium provided numerous such examples. The articles presented highlight the importance of interdisciplinary work within a legal context, yet also illustrate the challenges that come from incorporating the principles and theories of ancillary fields in the analysis, formulation, and administration of legal concepts. The administration of justice depends on the guidance of diverse theoretical perspectives that are necessary for providing a broader social context in which to consider legal issues. As the papers here suggest, a disregard of interdisciplinary applications could lead to misguided, inefficient, and obsolete legal theory and policy. Almost every aspect of modern law depends on precepts developed by other areas of study to ensure thorough analysis of public policy.

Law is ill-equipped to determine the impact of latent and explicit prejudices, evaluate the efficacy of policies and punishments, examine substantive differences in linguistic strategy, or predict the behavior of rational actors on its own. It must look to the contributions of other fields in order to develop and maintain effective and topical means for protecting rights and preserving order.

Efficient and advantageous integration of other disciplines and the law can, however, prove quite difficult. A policy debate, for example, based on the findings of psychological and sociological research, would not only require an understanding of relevant social science data, but the issue would also be shaped by prevailing legal factors such as current legislation, government rules, political theories, and legislative processes that could potentially affect or be affected by the conclusions drawn from such findings.

The articles in this Symposium reflect on many such difficulties encountered with the various interdisciplinary approaches to the law, and reveal complexities of the law that are often fascinating yet challenging to overcome. Many of the questions examined by the Symposium's contributors, therefore, provide illustrations of how ventures

2. *Id.*

into other fields can pose obstacles to legal research, practice, and scholarship. Such problems ranged from reconciling the findings of widely disparate research techniques to finding the best policy solution in light of unpopular rationales.

The purpose of law is to regulate the use of power, define standards of acceptable conduct, and provide the means for achieving social objectives. Language is therefore instrumental in this process, since it can be used to clarify ambiguities that may present themselves in agreements or rules, and can provide a more detailed account of the intentions and expectations of the relevant parties. As Larry Solan points out in his article on "pernicious ambiguity," language and the law have several common interests.[3] While linguistic scholars work toward revealing the rules and laws that govern the structure of particular languages, legal scholars are exposed to the intricacies of written and oral communication by the very nature of their field. Solan discusses the significance of language that can have more than one meaning and how such issues have been handled by courts.

The response of American lawyers to the problem of ambiguous language has been to adopt a verbose and complicated version of the English language, or "legalese." The field of law has thus appropriately earned the nickname, "the profession of words," not only because of the field's use of verbose English, but also because of the complex grammatical structures used in legal documents to ensure precision.

Christopher King and Claire Hill suggest that the "legalese" adopted by the American legal system needlessly causes contracts to be long, confusing, and labor intensive to draft, but that are only minimally better (if at all) than their German counterparts.[4] Hill and King use the linguistic differences between German and English contracts to illustrate the role of words in two very different legal cultures. By first identifying the disparities in language that are evident between English and German contracts—such as sentence length and complexity, word choice, redundancy, and structure—Hill and King identify the reasons for these disparities and evaluate how these are justified. By analyzing the contrasting legal language, Hill and King

3. Lawrence M. Solan, *Pernicious Ambiguity in Contracts and Statutes*, 79 CHI.-KENT L. REV. 859 (2004).

4. Claire A. Hill & Christopher King, *How Do German Contracts Do as Much with Fewer Words?*, 79 CHI.-KENT L. REV. 889 (2004).

are ultimately able to determine whether one contract law regime can be considered superior to the other.

The significance of language is also evident in Peter Tiersma's article, *Did Clinton Lie?: Defining "Sexual Relations."*[5] Tiersma uses former President Clinton's deposition as an example of how the law uses language in a highly technical and specialized manner. When asked if he engaged in "sexual relations" with Monica Lewinsky, as the term was defined by Paula Jones's lawyers, Tiersma suggests that Clinton responded truthfully. Despite painstaking attempts by Jones's lawyers to explicitly characterize all acts considered sexual through detailed definitions, Clinton was able to exploit the ambiguity of a single, seemingly innocuous term through the use of clever linguistic skills. The minute linguistic technicality Clinton cleverly exploited further demonstrates how linguistic techniques can affect legal outcomes.

Language can indeed expose a myriad of complexities that often expose various components of the law. In addition to the troubles it can present within the English language, as many of the previously discussed articles indicate, David J. Gerber, in his article *Authority Heuristics*, explores the ways in which language is instrumental in many of the misconceptions that arise when American legal scholars attempt to understand foreign law systems.[6] He suggests that specific strategies are necessary to overcome the inverse relationship between highly esteemed authoritative sources on particular foreign legal subjects and the accuracy of the information such sources convey, because "outsiders" (those who are not members of a foreign legal culture) often develop misconceptions of these foreign law systems as a result of numerous linguistic discrepancies between their culture and those another. The elements of authoritative legal texts that make up the content of legal texts that are of value to "insiders" (those who are members of the foreign legal system), Gerber argues, are precisely the same characteristics that tend to mislead outsiders seeking knowledge of a foreign system.

Since language itself also influences the actions of legal decision-makers, the operational meaning of legal texts is not only useful for predicting legal outcomes, but is also necessary for accurately assessing legal situations. Mere translation of legal texts is obviously not

5. Peter Tiersma, *Did Clinton Lie?: Defining "Sexual Relations"*, 79 CHI.-KENT L. REV. 927 (2004).

6. David J. Gerber, *Authority Heuristics*, 79 CHI.-KENT L. REV. 959 (2004).

sufficient for understanding the application and practice of foreign laws, but Gerber demonstrates how a mistaken dependence on conflicting authority heuristics can prove even more detrimental to actually discerning a text's complete operational meaning. Gerber suggests that "authoritative templates" be created specifically as a reference tool for outsiders that would outline the operational meanings within certain legal texts, thus minimizing the misperceptions outsiders may develop when researching foreign legal texts on their own. The obstacles presented by language discrepancies would be thwarted by cost-effective documents that could summarily point out many significant facets of a foreign legal system that might otherwise be overlooked or misunderstood.

Language may be necessary for effective and efficient communication and to clarify parties' intent and purpose, but, as a couple of the articles mentioned above imply, it also has the potential to complicate legal processes. Its advanced and field-specific application within the American legal system, in particular, has created a culture where labor-intensive preparation and/or analysis is required for even the most mundane legal tasks. Despite the clarifications, elaborations, and specifications facilitated by language utilized in a legal context, the incorporation of some linguistic applications also arguably contribute to the inefficiency and complexity of some sectors of the law. Even so, an interdisciplinary examination of the two enhances the public debate over whether changes to the current system are necessary.

It is often quite difficult, however, to determine the ideal response to subjective social dilemmas such as those that arise from linguistic manipulation of legal communications. Quantifiable evidence, conversely, can potentially offer a more objective examination of the problem at hand. For example, Matthew Adler's paper on the pricing of fear in regulatory regimes utilizes a cost-benefit calculation to develop a mathematical model on how fear motivates and impacts behavior.[7] By providing quantitative evidence, Adler relies on psychology to present his case for assigning a monetary value to occupational, environmental, or consumer hazards in order to realize the most appropriate regulatory approach.

7. Matthew D. Adler, *Fear Assessment: Cost-Benefit Analysis and the Pricing of Fear and Anxiety*, 79 CHI.-KENT L. REV. 977 (2004).

Erin O'Hara also examines a part of the law with psychological connections.[8] Rather than apply a cost-benefit analysis to current criminal justice procedures to determine the most efficient solution, she utilizes research that looks at the impact of the current system on both victims and perpetrators, from battered wives to negligent healthcare workers. Her article discusses many of the psychological factors that play a role in criminal sentencing, from the healing of the victim to the remorse of the perpetrator. She then goes on to suggest an alternative use for apologies in sentencing. Despite studies that suggest that a victim benefits when he is able to conceptualize the perpetrator as a human being, O'Hara points out that our judicial system is inadequately equipped to provide victims with the opportunity to take an active role in determining the sentence for the perpetrator. Our current system takes a more collective approach and treats criminal offenses as if they are just as much a crime against the community as they are against the victim. While this is often more efficient, objective, and protective of a defendant's rights, the current system fails to incorporate the victim's personal views and may thereby be psychologically detrimental to him.

In addressing the arguments against factoring the wishes of victims into punishments and sentences, it becomes apparent that the psychological and legal approaches clash. While judges and lawyers may conclude that a victim's opinion is inappropriate in the sentencing phase of a trial and only minimally beneficial to the victim and to society, psychologists may reach the opposite conclusion. O'Hara also analyzes empirical research on the nature and psychological impact of apologies and forgiveness, which I found to be incredibly interesting and surprisingly relevant. I initially considered the debate in terms of the tension between the desires of victims and the rights of defendants. The emotional influence of a victim could bias sentencing deliberations, and the sentences sought by a victim could be inappropriate. Still, O'Hara's discussion made me wonder how a legal system would be able to balance the psychological benefits to victims that flow from a sense of control and emotional vindication, with the legal system's duty to provide a fair sentence to the defendant based on more objective criteria. O'Hara's proposal provides a detailed theoretical framework that addresses the current legal system's shortfalls in helping victims, such that legal professionals consider the interests

8. Erin Ann O'Hara, *Apology and Thick Trust: What Spouse Abusers and Negligent Doctors Might Have in Common*, 79 CHI.-KENT L. REV. 1055 (2004).

of society and provide an objective balance at sentencing proceedings. In practice, however, would this additional component to the punishment phase of a case truly benefit victims if their input rarely affected the final outcome? Could their statements affect the likelihood of a mistrial if they are particularly lenient, overly harsh, obviously biased towards the defendant, or wholly disagree with the decision of the judge? O'Hara's article does an excellent job of including a wide range of relevant interdisciplinary scholarship and suggests a theoretically viable solution that should withstand critiques from several fields. The analysis may eventually improve the legal system, but may also generate as many new issues as it hopes to solve.

Looking at another component of criminal law, Jacqueline Ross examines the alarming trends in the value placed on police infiltration.[9] She examines cases where contrived offenses are used to convict a defendant, rather than independent crimes. She suggests that this potentially hazardous new inclination stems from reinforcing incentives that encourage law enforcement personnel to take "legal shortcuts." Contrived offenses, she argues, show what a defendant will do given the opportunity, not what he is capable of on his own. This approach gives infiltrators little motivation to limit their influence. That the actual amount of harm such an offense inflicts on society is not deemed relevant suggests that this component of our legal system should be reevaluated.

Bruce Chapman uses game theory to suggest an economic method for applying theories of rationality to legal interactions.[10] Rather than demonstrating how the law benefits from his interdisciplinary study, Chapman uncovers many of the inadequacies of game theory and Nash equilibria in predicting and explaining the verbal exchanges of rational actors.

There are many areas of psychology that can provide practical benefits to legal professionals. Barbara Spellman suggests that many legal skills, such as analogy, can be taught and should be looked at in more detail by legal educators, since causal and counterfactual reasoning is relevant to the majority of civil and criminal actions.[11] By

9. Jacqueline E. Ross, *Valuing Inside Knowledge: Police Infiltration as a Problem for the Law of Evidence*, 79 CHI-KENT L. REV. 1111 (2004).

10. Bruce Chapman, *Common Knowledge, Communication, and Public Reason*, 79 CHI.-KENT L. REV. 1151 (2004).

11. Barbara A. Spellman, *Reflections of a Recovering Lawyer: How Becoming a Cognitive Psychologist—and (In Particular) Studying Analogical and Causal Reasoning—Changed My Views About the Field of Psychology and Law*, 79 CHI.-KENT L. REV. 1187 (2004).

providing concrete examples of relevant applications of psychology in a legal context, Spellman makes the case for the usefulness of incorporating psychology into law.

John Darley and Kenworthey Bilz present another social science approach to punishment that touches on some of the same concepts mentioned above.[12] Criminal law theory outlines four purposes of criminal punishment: rehabilitation, deterrence, incapacitation, and retribution. Recent legal policy, however, seems to be increasingly focused on deterrence and incapacitation. Darley and Bilz argue that these policies are fundamentally misguided because they fail to address the underlying social problems that contribute to crime, they are ineffective at deterring certain subgroups of the population, they incapacitate potentially productive members of society, they overlook opportunities for rehabilitation and increase recidivism rates, and they limit the ability of an offender to pay retribution. Some alternatives Darley and Bilz mention seem to be much more appropriate, cost-effective, and collectively beneficial than the approach derived from a purely deterrent and incapacitative policy. For example, the "day fine" used in Finland is a fine that varies in proportion to the defendant's income so as to provide the same deterrent effect for civil crimes to both wealthy and poorer citizens.

More likely alternatives here in the United States involve an element of humiliation to reinforce public disapproval and encourage behavior modification, such as a bumper sticker declaring a personal drinking problem for a convicted drunk driver. Offenders may also be forced to provide some sort of retribution to the community through volunteer work or financial compensation. Darley and Bilz promote a system where offenders are not locked away in expensive facilities that encourage deviant behavior, but instead where criminals are faced with a punishment tailored to their specific criminal actions. The social pressure from friends, relatives, and neighbors has been shown to produce a much greater deterrent than the threat of more traditional criminal sanctions. The community benefits from knowing justice is being done in such an approach. In this instance, it seems that judicial systems are hesitant to embrace these experimental punishments because they are difficult to formulate and supervise. Progressive communities, however, are starting to realize the advantages of an approach to punishment based on social science, especially for

12. Kenworthey Bilz & John M. Darley, *What's Wrong With Harmless Theories of Punishment*, 79 CHI.-KENT L. REV. 1215 (2004).

non-violent offenders who pose little additional threat to society. This alternative policy approach should be thoroughly considered by legal systems burdened by high recidivism rates and jail over-population.

Yet another philosophical perspective on the law was provided by Richard Warner, who suggests that we must revise our existing commitment to the respect of persons in order to override competing rights.[13] He discusses several scenarios where moral rights clash with the Comparative Conception, a term he uses to describe the justification of a particular action stipulated by a comparison of conflicting reasons to make a rational decision. Preemptive Conception, on the other hand, is based on value-weighted judgments that ultimately reflect on our personal and collective identities. Warner contends that our incomplete or inconsistent values beget preemptive reasons that are often blurry, vague, and are hard to clearly and concisely ascertain. These exceptions are often limited by individuals who collectively agree on what constitutes palliating circumstances and therefore merits reason-preemption consideration. Rational decisions are more subjective with this approach, and preemptive reasoning often impels debates on the moral expostulations in question before prevaricating a collective, preeminent solution. Warner concludes that public policy would significantly benefit from enhanced attention to reason-preempting commitments because of their significant role in decision making, but also in defining our social identity.

Finally, David Luban presents a religious fable that looks at the many ancient foundations to modern law.[14] Luban builds on a story of the actions of a group of rabbis who refuse to deviate from the wishes of the majority rather than do what a divine voice instructs them is right. He unexpectedly concludes that the story, while possibly providing insight to others, does not apply universally to concepts of authority and law. He asserts that the lessons derived from the story are dependent on individual interpretations, but they nevertheless provide an interesting analogy to modern law.

All of the articles in this Symposium demonstrate a wide array of interdisciplinary approaches to modern law and incorporate research that is dependent on knowledge gathered from other disciplines. In doing so, these articles provide a glimpse of the difficulties that can be

13. Richard Warner, *Rights, Rationality, and the Preemption of Reasons*, 79 CHI.-KENT L. REV. 1091 (2004).

14. David Luban, *The Coiled Serpent of Argument: Reason, Authority, and Law in a Talmudic Tale*, 79 CHI.-KENT L. REV. 1253 (2004).

encountered when formulating conclusions based on multiple areas of study. By considering the unique interdisciplinary approach to law provided by each of the Symposium's contributing scholars, we can examine the benefits and limitations that arise from incorporating knowledge from other disciplines into the law. While the topics covered in this Symposium—philosophy, psychology, biology, religion, and language—illuminate many of the unique advantages of combining the analysis of legal issues with other fields, it is also important to note that these subjects are by no means exclusive in terms of their involvement with public policy and legal scholarship.

My brief assessments of these articles provide only a limited account of the great range of interdisciplinary work presented in legal contexts. Each discipline provides a unique and valuable perspective on the study and practice of law that enhances public policy and ensures justice and order. The "Law &" Symposium not only showcases the wide range of noteworthy benefits gleaned from the contributions of other subjects, but also reveals the complexities of an interdisciplinary approach as well. As a student about to begin her law school career, I am amazed at the fascinating issues brought to light by the interdisciplinary focus of this Symposium.