

30th Anniversary Issue

# The Canadian Journal of Law & Jurisprudence

*An International Journal of Legal Thought*

---

Vol. XXX No.1 February 2017



Western  Law

CAMBRIDGE  
UNIVERSITY PRESS

## Statement of Purpose

The *Canadian Journal of Law & Jurisprudence* serves as a forum for the publication of scholarly writing in general and special jurisprudence and legal philosophy. In this regard it will publish articles that address the nature of law, the philosophical analysis or criticism of substantive and procedural doctrine, that explore the philosophical bases of constitutional law, that examine the form and nature of legal or judicial reasoning, that investigate issues concerning the ethical aspects of legal practice, and that study (from a philosophical perspective) concrete issues facing contemporary society.

## Editorial Board

### *Editors*

Richard Bronaugh  
Andrew Botterell

### *Production Editor*

Regina Satorius

### *Student Editors*

Oliver Hutchinson  
Christina Iannozzi  
David Isaac  
Alyssa Jervis  
James Judson  
Emily Owens  
Aileen Simon  
Cristina Tomaino  
Claudia Warner-Romano

### *Western Law Coordinator*

Tigger Jourard

### *Consulting Editors*

Alan Brudner  
Bruce Chapman  
David Dyzenhaus  
Randal Graham  
Leslie Green  
Barry Hoffmaster  
Charles Jones  
Dennis Klimchuk  
Margaret Martin  
Michael Milde  
Dennis M. Patterson  
Denise Réaume  
Arthur Ripstein  
Wayne Sumner  
Mark Thornton  
Richard Vernon  
Wil Waluchow  
Grégoire C. N. Webber  
Ernest Weinrib

**Cover:** The motto of this Journal is *alis volat propriis*. What this motto says is that we fly on our own wings. What it has meant was our being not only self-sustaining and self-publishing, but also going wide with regard to what we view as jurisprudentially attractive and worthwhile as philosophical discovery. The people at Cambridge University Press observed that *CJLJ* has been a successful journal in the field of legal philosophy and they wanted in on the flight. Our prospects have opened and our wings will spread.

Beginning with Volume 28 the *Canadian Journal of Law & Jurisprudence* has been published jointly by Cambridge University Press and the Faculty of Law, the University of Western Ontario.

Appreciation is expressed to SSHRC for the aid to scholarly journals we receive.

The journal is included in the Cambridge Core service and can be found at [cambridge.org/cjlj](http://cambridge.org/cjlj).

ISSN: 0841-8209

E-ISSN: 2056-4260

© *Canadian Journal of Law & Jurisprudence* 2017



Applies to text only

## TABLE OF CONTENTS

Ludvig Beckman	Legal Power and the Right to Vote: Does the Right to Vote Confer Power? .....	5
Alexander Brown	The “Who?” Question in the Hate Speech Debate: Part 2: Functional and Democratic Approaches .....	23
Tanzil Chowdhury	Time Frames and Legal Indeterminacy .....	57
Sean Coyle	Natural Law and Goodness in Thomistic Ethics .....	77
Benjamin Ewing	Conventionality, Disagreement, and Fidelity .....	97
David Frydrych	Rights Modelling .....	125
Binesh Hass	The Methods of Normativity .....	159
Ofer Malcai & Ronit Levine-Schnur	When Procedure Takes Priority: A Theoretical Evaluation of the Contemporary Trends in Criminal Procedure and Evidence Law .....	187
<i>Essay</i>		
Greg Simmons	Free Will and Law: Toward a Pragmatic Approach .....	215

*alis volat propriis*

## AUTHORS

**Ludvig Beckman** (B.A., Ph.D., Uppsala University, 2000) is Professor of Political Science at Stockholm University and the Institute for Futures Studies, Stockholm, Sweden. His books include *Territories of Citizenship* (with Eva Erman, 2012) and *The Frontiers of Democracy. The Right to Vote and its Limits* (2009). His research centers on democratic theory.  
Email: ludvig.beckman@statsvet.su.se

**Alexander Brown** (B.Soc.Sci., Birmingham; M.A., Ph.D., University College London, 2005) is Senior Lecturer in Contemporary Social and Political Theory at the University of East Anglia (UEA). He is the author of *Hate Speech Law: A Philosophical Examination* (Routledge, 2015), *Ronald Dworkin's Theory of Equality: Domestic and Global Perspectives* (Palgrave, 2009), and *Personal Responsibility: Why it Matters* (Continuum, 2009). His research interests include political philosophy, constitutional law, administrative law and jurisprudence.  
Email: alexander.c.brown@uea.ac.uk

**Tanzil Chowdhury** (B.A., M.Phil., Ph.D., University of Manchester, 2016) is a teaching assistant at the School of Law, University of Manchester. His current research centres on genealogical approaches to the UK 'War Prerogative' and its intersection with formulations and re-formulations of Imperialism.  
Email: tanzil.chowdhury@manchester.ac.uk

**Sean Coyle** (LL.B., Dundee; Ph.D., Glasgow, 1998) is the Professor of Jurisprudence at the University of Birmingham, UK. He is the author of *Modern Jurisprudence: A Philosophical Guide* (Hart, 2014). His research interests lie in legal and political philosophy, particularly scholastic legal and moral theory, and in human vulnerability. Email: S.Coyle@bham.ac.uk

**Benjamin Ewing** (A.B., Brown; J.D., Yale; M.A., Ph.D., Princeton, 2016) is a Visiting Assistant Professor at Duke University School of Law. He was a Graduate Prize Fellow at Princeton's University Center for Human Values in the 2014-15 academic year, during which time he completed a significant amount of work on his contribution to this volume. Ewing writes about issues related to criminal law, tort law, and philosophy of law. Email: ewing@law.duke.edu

**David Frydrych** (Hon. B.A., Toronto; J.D., Benjamin N. Cardozo School of Law; LL.M., Toronto; D.Phil., Oxford, 2016) is a postdoctoral fellow at the National University of Singapore's Faculty of Law.

**Binesh Hass** (Hon. B.A., Toronto; M.St., D.Phil. (exp 2017), Oxford) is a doctoral candidate in the philosophy of law at the University of Oxford and a visiting researcher at the Faculty of Law, Freie Universität Berlin. His research centres on practical reason in legal and political philosophy and the philosophy of mind. Email: [binesh.hass@law.ox.ac.uk](mailto:binesh.hass@law.ox.ac.uk)

**Ofer Malcai** (LL.B., M.Sc., Ph.D. (Physics), LL.D., Hebrew University of Jerusalem, 2015) is a Lecturer at the Hebrew University of Jerusalem, Israel. His research interests include legal and moral philosophy and evidence law. Email: [malcai@huji.ac.il](mailto:malcai@huji.ac.il)

**Ronit Levine-Schnur** (LL.M., LL.D., Hebrew University of Jerusalem, 2015) is an Assistant Professor at Radzyner Law School, Interdisciplinary Center (IDC) Herzliya, Israel. She studies property law, land use law, and legal theory, from philosophical, economical, and empirical perspectives. Email: [ronit.levineschnur@idc.ac.il](mailto:ronit.levineschnur@idc.ac.il)

**Greg Simmons** (B.A., British Columbia; J.D., York; M.A., Ph.D. (A.B.D.), Simon Fraser) is a faculty member in the Department of Criminology at Kwantlen Polytechnic University and a doctoral candidate at Simon Fraser University's School of Criminology. His research interests include corporate and elite crime, green criminology, regulatory theory and legal philosophy. Email: [Gregory.Simmons@kpu.ca](mailto:Gregory.Simmons@kpu.ca)