



On the Idea of Law

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Abstract

The idea of law is a *focus imaginarius* lying beyond the bounds of possible experience but nevertheless structuring that experience. The practices composing a legal order refer to the idea of law, and those references embody assumptions concerning law's nature. Yet, when we try to combine these various assumptions into a coherent understanding of the idea of law, we find them to be problematic. The resulting puzzles give rise to a philosophical debate concerning law's nature. The positions adopted within that debate tacitly inform and structure the scholarly analysis and judicial application of law. In this way, law proves to be a reflexive enterprise involving inquiry into its own nature. Denials of this reflexivity lead to serious distortions in our understanding of the framework of legal thought. When properly understood, the idea of law proves to be an immanent moral ideal, closely related to ideas of freedom, justice, and civility. Since, in the circumstances of the real world, the ideal is never fully attainable, law is always touched, to a greater or lesser extent, by the “pathos of incompleteness.”

Keywords Jurisprudence · Philosophy of Law · Kant · Gustav Radbruch · Lon Fuller · H. L. A. Hart · Samuel Taylor Coleridge · Freedom as independence

The idea of law seems to play a central role within our form of political association. In saying this, I am not simply offering the observation that *law* plays such a role. Law might be thought of, albeit somewhat reductively, in terms of the enactment of rules, the decisions of courts, the enforcement of sanctions, the provision of judicial remedies, and other obvious aspects of civilized governance. My claim is not one concerning such evident conduct-guiding and motivation-structuring features. Rather, I am concerned with the fact that those features are thought of as authorized and legitimized by something that we call “the law”; or they acquire their acknowledged authority from the fact that they are regarded as instances of “law.”

There is a long-standing philosophical debate concerning the idea of law, but it is a debate which is frequently mischaracterized and misunderstood. The idea of law is not a taxonomic category, and the philosophical debate does not stem from the vagueness inherent in our taxonomy of social forms: we are not here engaged in an attempt to clarify the categories employed by descriptive social science. The usage of the word “law” that we need to consider in jurisprudence is not the use of that word to categorize or describe

phenomena, but the role that the word has *within* the practices making up the social existence of a legal order. Those practices do not describe an independent phenomenon, but call law into being. The idea of law serves to orient our practices, not to categorize them. For law's social realization consists in an intersubjective structure of understandings and practices, within which the idea of law functions as a *focus imaginarius*, lying beyond the bounds of possible experience but lending coherence and significance to that experience.¹

The philosophical debate surrounding the question of law's nature has never been entirely separable from the activity of developing legal doctrine by the interpretation and application of the law.² After all, as Roscoe Pound put it, “Making or finding law, call it which you will, presupposes a mental picture of what one is doing and why he is doing it.”³ In this way, jurisprudence is both a philosophical reflection

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¹ Kant, *Critique of Pure Reason*, at A644/B672. Kant compares “ideas of reason” to a “*focus imaginarius*” which “lies quite outside the bounds of possible experience.”

² The philosophical inquiry into law's nature is often known as “jurisprudence” and it is a virtue of that name (by contrast with the term “philosophy of law”) that it emphasizes this close connection with doctrinal legal thought.

³ Roscoe Pound, *An Introduction to the Philosophy of Law*, revised edition, (Yale University Press 1954) p. 25.

upon law's nature and an integral part of the phenomenon of governance by law. In particular, jurisprudence shapes the forms of doctrinal reasoning that govern the construction of the edifice of law from the discrete prescriptions contained in the various sources of law (such as statutes and precedents). Understanding how this dual status (as a philosophical reflection upon the phenomenon of which it is a part) is possible requires that we understand the nature of law. Consequently, jurisprudence can fully understand its own status only when it has solved its central problem by answering the question "What is law?" But that is a question that does not admit of a clear-cut answer. Rather, it invites an exploration of law's potentially inexhaustible intellectual resonance. In this way, jurisprudence represents the reflexivity of legal thought: the sense in which law is always "in quest of itself."⁴

Jurisprudence, however, has in recent decades lost its way and its sense of purpose. The confusion stems in part from a misguided denial of the reflexivity of legal thought that was inherent in the theory of law offered by H. L. A. Hart. Such a denial inevitably distorts the character of jurisprudential thought. As a result of this, jurisprudence has become wracked by self-doubt and self-misunderstanding. These misunderstandings threaten to erase our deep implicit grasp of what John Finnis has called the "vastly complex cultural object" which is the law.⁵ The idea of law is something that lies close to the heart of our civilization. This essay is written in the hope of restoring some sense of the idea's depth and richness of significance.

Law's Governance

Legislators do not regard themselves as issuing prescriptions backed by penalties: they regard themselves as enacting "laws," and they attach great importance to that understanding. The status, as law, of their enactments is seen as fundamental to the legitimacy of the claim that those enactments make upon the conduct of the citizen. Any citizen who asked the legislators why their enactments should be obeyed would in all probability be told "Because they are the law!"; and any citizen who consistently refused to describe such enactments as "law," but persisted in calling them "orders" or "decrees," would unfailingly, and doubtless correctly, be taken to be expressing thereby their recusancy.

Similarly, judges claim to decide cases by reference to "the law." In the vast majority of cases, what "the law" says

is treated as the decisive consideration to which the judges must have regard, and which is critical to the decision's justification. A litigant who asked why the judges' decision should be accepted and complied with would in all probability be told "Because it is an application of the law!" For the notion of "law," as it is standardly invoked within the practices that contribute to the legal ordering of society, seems to be inseparable from ideas of presumptive authority and legitimacy.

Of course, we may at times be forcibly struck by the law's injustice, and may reflect that law is, after all, a fallible product of human decision and not a body of immutable moral truths. This sometimes encourages reductionist pictures of law as simply an apparatus of very human prescriptions that, by their varying content, can be equally serviceable for justice or for oppression. But such understandings of law oversimplify and thereby mislead. Our experience of the law's injustice is always pervaded by what Bernard Williams has called "the pathos of incompleteness": a sense that the object of our reflection falls short, not merely of some standard that is *relevant* to the object, but of an ideal that is immanent and essential to the object's character.⁶ We must sometimes regretfully conclude that the world is not as it ought to be, while nevertheless acknowledging that the relevant fact about how the world ought to be is also a constitutive feature of the world as it currently is.⁷

Legal positivists have often sought to deny or obscure this aspect of our thought. They have resisted the idea of a deep conceptual connection between law and justice, pointing out that judges and lawmakers are human and are therefore, in common with all other human beings, subject to the requirements of justice in all contexts where those requirements are relevant. The demands of justice, these critics suggest, although applicable to judges and lawmakers in virtue of their status as humans, are not integral to the idea of law itself. Such arguments are unconvincing. For, although all agents and institutions are required to act justly, a clear failure of justice on the part of the law seems fundamentally different from the lamentable injustices of ordinary human life. It is a failure in an institution which is expected to be the public *embodiment* of justice, even if some degree of shortfall from that value is accepted as inevitable. This sense of the immanence of ideals within the practice of law has led many jurists to endorse views such as those of Gustav Radbruch, who observed both that "Law is the reality whose

⁴ Lon Fuller, *The Law in Quest of Itself*, (Chicago: Foundation Press, 1940).

⁵ John Finnis, "Natural Law and Legal Reasoning" in Robert P. George (ed.), *Natural Law Theory* (Oxford University Press 1992), p. 141.

⁶ Bernard Williams, *The Sense of the Past* (Princeton University Press 2006), p. 172.

⁷ See Simmonds, "Kletzer's Direttissima" (2021) 66 *American Journal of Jurisprudence* 339.

sense is to serve the value of law, the idea of law,” and that “Law is the reality whose sense is to serve justice.”⁸

These features of the idea of law are reflected in the fact that a judge’s duty is thought of, not simply as a duty to apply the established rules, but as a duty to do “justice according to law.” That duty requires the courts to interpret the law, so far as possible, on the assumption that it is a good faith attempt at articulating the requirements of justice, and that the body of law as a whole aspires to realize some coherent conception of justice. For, while the law can certainly be unjust, law without a steady and generally reliable aspiration to justice is, in some sense, a departure from the guiding idea of law. That guiding idea demands respect for authoritative rules, but at the same time precludes a very narrow adherence to the written text of individual enactments or decisions, without regard to wider considerations. It invites the introduction of qualifications or formulations (themselves formulated in precise rule-like form) that may not be explicit within the text, but which can legitimately be regarded as implied, once the individual rule is read in the context of the law as a whole, and on the assumption that the law aims to serve a consistent understanding of justice.

There are very occasional instances of the highest courts assuming a power to depart from established rules when those rules seem to them to be seriously out of line with prevailing moral ideas. But, in such cases, the courts tend (expressly or impliedly) to acknowledge their presumptive obligation to follow the established prescriptions, an obligation which can be outweighed only by a pressing need to avoid clear injustice. If such adjudicative practices were to be subjected to serious critical challenge, they would doubtless be defended by reference, not to a general claim about the political desirability of the practices, but by reference to an appropriate theory concerning the nature of law, and law’s relationship with justice. In that way, adjudicative practice is pervasively governed by the idea of law.

Perhaps the most striking contemporary illustration of the power that attaches to the idea of law is the influence of international law. For a great many people, in many parts of the world, the suggestion that their State is in breach of international law is a most serious criticism: it is not regarded as an accusation that should lightly be shrugged off. As Karen Alter puts it “Most people accept at face value that

governments should play by the legal rules of the game.”⁹ And, as a result of this widespread public attitude, international judges are able to exercise real political influence, even though they “wield neither the sword nor the purse; they only have the power to speak the law.”¹⁰ Yet the very same citizens who adopt this attitude would, in most cases, have little or no understanding of the character of international law, or of its sources and content. The fact that its requirements are generally judged to be requirements of “law” is seen as giving them a presumptive authority, without any prior investigation of the law’s justice or legitimacy.

The idea of law plays a part even in private disputes without any official or governmental involvement. In a dispute with my neighbor, my neighbor is more likely to be impressed with the rights and responsibilities articulated in the law than he is with my own moral opinion on the matter. This is so even in cases where litigation is in the highest degree unlikely, so that the citizen’s concern for the law is not reducible to a fear of the law’s sanctions. For, while individual moral opinions are regarded as endlessly contestable, the law is viewed as possessing a content that has some independence from the conflicting, and perhaps self-serving, moral opinions of the disputants. Habermas has suggested that “in complex societies, law is the only medium in which it is possible reliably to establish morally obligated relationships of mutual respect even among strangers.”¹¹ As notions of virtue and common morality come to be regarded with skepticism or even downright hostility, we begin to see much plausibility in Christoph Kletzer’s claim that “for many the law stands high above morality.”¹²

What Is Law?

The question “what is law?” has been asked since Ancient Greece and has continued to puzzle us. It is a question that is easily misunderstood. It is sometimes misguidedly taken to concern the use of the term “law” as a taxonomic label for a distinctive type of social practice, as such a label might be employed by an empirical social scientist. But, while the word “law” *can* be employed to label types of social ordering (thereby giving rise to such taxonomic questions), its primary use, and the use which is important to jurisprudence, is *within* the practices that make up the social existence of a

⁸ Gustav Radbruch, *Legal Philosophy* (1932), translated by Kurt Wilk, in *The Legal Philosophies of Lask, Radbruch and Dabin* (Cambridge, Mass.: Harvard University Press 1950), pp. 73, 75. Both quotations are given in the slightly altered translation offered by Robert Alexy in Alexy, *Law’s Ideal Dimension*, (Oxford University Press 2021), p. 108. The difference between the two statements alerts us to the complex relationship between justice and legality.

⁹ Karen J. Alter, *The New Terrain of International Law* (Princeton: Princeton University Press 2014), p. xvi.

¹⁰ Alter, op. cit. p. 4.

¹¹ Jurgen Habermas, *Between Facts and Norms*, translated by W. Rehg (Cambridge: Polity Press 1996), p. 460.

¹² Christoph Kletzer, *The Idea of a Pure Theory of Law* (Oxford: Hart 2018), p. 75.

legal order. Law is realized only in the form of a vast complex of shared understandings, revolving around the idea of “law.” The problems of jurisprudence arise, not from any taxonomic concerns, but from requirements of coherence within the body of legal thought itself. For, when we reflect upon the understandings that make up the existence of law, we see that these understandings cannot easily be assembled into any intelligible picture of law’s nature: it is not clear how we should understand the nature of the abstract object “law” to which the various understandings all refer.

For example, novice lawyers are taught that, when they offer a proposition of law (e.g., a proposition regarding the rights and duties of individuals) they must be ready, when challenged, to demonstrate that the proposition can be justified by reference to legal “authority” (perhaps in the form of an enactment or a judicial decision). That practice of requiring the citation of authority suggests a conjunction of two assumptions. The first is an assumption that all sound propositions of law can be grounded in prescriptions that have been “posited” by human decision. The second is an assumption that human acts can posit such legal prescriptions only when they are legally authorized so to do. The conjunction of these two assumptions seems to give rise to an infinite regress where each law is created by a human act that was authorized by a higher law which was itself created by a human act, etc.¹³ Law is something that “governs its own creation,” as legal theorists often put it. How is the regress to be blocked? Two main alternatives have dominated the long-running debate.

On the one hand is an approach exemplified by Immanuel Kant’s observation that, although it is possible to conceive of a system containing only positive laws, a “natural law” would still have to underpin the system by establishing the law-making authority of the supreme lawmaker.¹⁴ Broadly speaking, this approach proceeds from the idea that there are certain very general moral requirements on human conduct. These requirements, however, are in themselves insufficiently determinate effectively to govern and coordinate conduct within a community. They therefore require the creation of positive laws which will render the general requirements of morality, or “natural law,” more determinate, and effectively enforce them. By requiring the creation of positive law, natural law also authorizes its creation.

On the other hand is an approach (usually referred to as “legal positivism”) which endeavors to ground positive law in power alone. In its most sophisticated form,¹⁵ this

approach proceeds by restricting the scope of our assumption that human action can create law only if it is legally authorized so to do. When construed as a fundamental requirement of the existence of law, the assumption leads (as we have seen) to the thesis that law, in order to *be* law, must be grounded in moral value. But sophisticated versions of legal positivism reconstrue the assumption as a principle which is internal to the hierarchical structure of a legal system, having no application beyond that context. The suggestion is that, when some structure of rules (perhaps established by the practices of a ruling group) allocates lawmaking power to various agencies within the regime, the requirement of legal authorization for lawmaking is a feature of the overall structure. Law, on this view, necessarily exhibits a certain systematic structure, whereby secondary rules (i.e., rules regulating other rules) identify and authorize primary rules governing conduct. But the structure as a whole nevertheless derives its status as law from its success in securing the compliance of the bulk of the population, and not from any fundamental value-based authorization. That success may be the result of coercion; or it may result from a widespread belief in the regime’s justice (whether or not the regime is genuinely just); or it may simply be the result of unreflective habit on the part of a subservient and uncritical populace. The theory can afford to set on one side the question of *how* the regime comes to have the ability to secure compliance, and simply focus upon the *fact* of such general compliance.

The subterranean influence of the problem of the infinite regress can be seen most clearly in the widespread popularity of the notion of “sovereignty” as the basis of lawmaking. For sovereignty is a liminal notion poised ambiguously between the very different ideas of overwhelming factual power and ultimate normative authority. It therefore replicates the basic puzzle, and derives much of its rhetorical power and fascination from that fact. It is against this background that we encounter Carl Schmitt’s famous claim that “All significant concepts of the modern theory of the state are secularized theological concepts.”¹⁶ Jurisprudence is in essence an attempt to free legal thought from any dependence upon theological mystery.

The problem of the infinite regress, and the choice between the two alternative ways of blocking the regress, gives us the first of three closely connected puzzles that lie

¹³ Another possibility might be some sort of non-vicious circle or network of mutually supporting elements. In the present context, limitations of space preclude an examination of that possibility.

¹⁴ Kant, *Metaphysics of Morals*, 6:224.

¹⁵ I have in mind here the jurisprudence of H. L. A. Hart. Hart is sometimes misunderstood by those who take at face value his effort

Footnote 15 (continued)

to distinguish between the governance of law and what he calls the “gunman situation” of governance by coercive threats. See my remarks on this in Simmonds, “Law, Reason and Celestial Music,” *New Essays on the Fish-Dworkin Debate*, edited by Thomas Bustamante and Margaret Martin (Oxford: Hart 2023), p. 51 at pp. 55–59.

¹⁶ Carl Schmitt, *Political Theology*, translated by George Schwab (University of Chicago Press 2005), p. 36.

at the heart of the question “What is law?” A second puzzle arises, not (like the regress) from law’s character as posited by legally established authority but rather from its character as an integrated system. The dual character of law, as both a product of authority and a reasoned system, is reflected in the majority of European languages (the exceptions are English and Polish) which have two distinct words for law, deriving from the Latin distinction between *lex* and *ius*. The distinction between the two marks the difference between the discrete posited provisions of the law (*lex*) and the systematic *corpus iuris* into which those provisions must be integrated before they can properly be understood (*ius*). The etymological connection here between “*ius*” and “justice” is of considerable importance, for legal scholars tend to interpret the law on the assumption that it is a good faith attempt at articulating the requirements of justice and the common good. In this way, positive law, although itself a product of authority, is assumed to possess a background in reason: a background that lends a degree of objectivity and determinacy to the interpretation of the law. The body of law that results is thought of as encompassing both reason and fiat: *ratio* and *voluntas*.

This is the aspect of law that gives it its learned, scholarly character. It arises from the fact that individual enactments or decisions acquire their full significance as sources of law only when they are interpreted in the light of the entire system of law and legal ideas, and on the assumption that it is law’s object to serve justice. The propositions of law set forth in a legal treatise, or offered by a lawyer in forensic argument, will often go well beyond anything that could be found explicit within the text of a statute or a judicial judgment. Yet they are presented as grounded in, and justifiable by reference to, precisely such sources. Frequently, jurists will disagree about the law’s content even though they are all equally familiar with the sources upon which the law is said to depend. That is why we have a great plurality of legal treatises, all of which try to set forth accurate accounts of the law’s rules, principles, and doctrines, but each of which is an individual work of scholarship that will differ in numerous ways from the accounts of the law offered by other such works. When a settled view of the law finally emerges, it is not a crude assemblage of enactments and judicial rulings, but the outcome of a lengthy process of reflection and collective dialogic striving that seeks to fit clearly articulated rules and principles into an orderly system of ideas, social interaction, practice, and understanding.

When judges and jurists put forward propositions of the existing law, therefore, they are not simply reporting on the existence of this or that authoritatively established prescription, such as a statute. Lawyers will debate and disagree about the “law-making effect” of a statute, and will thereby draw different propositions of law from what they nevertheless agree to be a valid and authoritative enactment.

Something similar is true of judicial precedents. For precedents contribute to the law principally by developing rules and principles that fit within the system as a whole, and are understood to refine that system as embodying some coherent conception of justice.

In an attempt briefly to highlight this scholarly and systematic facet of the law, so closely linked to the notion of justice, I have elsewhere suggested that such things as statutes and precedents might be thought of as akin to the materials in a builder’s yard, while “the law” itself is an ideal edifice that is to be built from those materials: it is always an ideal of contestable content rather than a readily available and fully articulated given.¹⁷ It is this aspect of the law that Philip Allott evokes when he tells us that “Legislative texts and reported cases are not themselves the law. They do not even contain the law. The law is somewhere else and something else.”¹⁸ We may think of this aspect of law as law’s “ideality.”

Beyond the problem of the infinite regress of authority, and the problem of law’s ideality, is a further issue, which lends both weight and importance to the inquiry as a whole. For laws are invoked as *justifications*. In particular, they are invoked as justifications for the state’s imposition of sanctions upon individuals. Even those legal positivists who seek to ground law’s nature in power, rather than in moral value, nevertheless accept that an adequate theory of law must be able to explain how law can intelligibly be invoked as a justification for the imposition of sanctions. For this reason, H. L. A. Hart rejected the suggestion of John Austin that propositions concerning legal obligations should be understood as predictive statements concerning the likelihood of suffering sanctions in certain circumstances.¹⁹ As Hart pointed out, such propositions concerning legal obligations are typically invoked by courts as *reasons* or *justifications* for the imposition of a sanction, and therefore cannot plausibly be analyzed as mere predictions.²⁰

Yet it is far from clear why law should be given this special force. After all, even those of us who think that the aim of serving justice is somehow part of the essential idea of law must nevertheless accept that law and justice are very far from being the same thing. Indeed, the law is often less than perfectly just, and sometimes very unjust. Nevertheless, we attribute to law a justificatory force that seems to be even

¹⁷ Simmonds, *Law as a Moral Idea* (Oxford University Press 2007), p. 14. See also Simmonds, “Reply: the Nature and Virtue of Law” (2010) 1 *Jurisprudence* 277 at pp. 287–292.

¹⁸ Philip Allott, *The Health of Nations: Society and Law Beyond the State* (Cambridge: Cambridge University Press 2002), p. 43.

¹⁹ John Austin, *The Province of Jurisprudence Determined* (London: John Murray 1832).

²⁰ H. L. A. Hart, *The Concept of Law* (1961) third edition, introduced by Leslie Green (Oxford University Press 2012), pp. 11, 84.

more weighty than justice itself, for not all requirements of justice legitimize coercive enforcement, whereas a system of law that is wholly lacking in sanctions would widely be regarded as seriously deficient and falling a long way short of our normal conception of law.

The position therefore seems to be as follows. We constantly refer to something that we call “the law,” and we attach great importance to this abstract object. Yet, when we try to understand the character of law, we find that its nature is intensely problematic. It is something that authorizes its own creation, presenting us with the puzzling suggestion of an infinite regress of authorizations. Moreover, judges and jurists offer propositions that they claim to be sound statements of the existing law, yet frequently disagree about the precise formulation of these propositions, and sometimes disagree quite fundamentally. They accept that the law’s content depends upon such authoritative sources as enactments and judicial precedents, but they nevertheless reach different conclusions about the content that results from these sources. In this way, the content of “the law” seems to depend upon such ascertainable things as enactments and judicial precedents, without being reducible to those materials. Rather, “the law” seems to hover uncertainly above or beyond the materials upon which it is said to depend. Finally, the law is accorded a special justificatory force. This is especially obvious in the context of judicial decisions where the decision of a court must be justified by reference to the law. Once the court has reached a conclusion concerning the requirements of the law, there is no further question to be addressed.

Dissolving the Problem?

In recent decades, by far the most influential response to the puzzle of law’s nature has been that set out in H. L. A. Hart’s 1961 book *The Concept of Law*. Hart was writing in Oxford, and within the context of an Oxonian tradition of philosophy that viewed the great questions of Western philosophy with skepticism. Sophisticated philosophers were expected to demonstrate, by one route or another, that such traditional questions are largely misconceived. A standard technique was the replacement of each large and seemingly unanswerable question with a plurality of more limited questions that appeared to admit of an answer, while leaving nothing further about which one could be genuinely puzzled. This was the core of Hart’s approach.

It will be recalled that the philosophical puzzle of law’s nature arises from the fact that the idea of law seems to be an abstract object to which our practices (the practices making up the empirical phenomena) refer. But our references to law embody assumptions concerning law’s nature, and the relevant assumptions ascribe to the abstract object

“law” properties that cannot coherently be combined. Hart’s response is to offer an account of the “general framework of legal thought”²¹ in which such an abstract object plays no part. The strategy is intended to reveal the philosophical debate as largely illusory.

Hart’s approach separates three distinct questions. One concerns the general characteristics that will be exhibited by anything that we might recognize as a non-marginal instance of a legal system. This raises the sort of purely taxonomic issue with which the philosophical question of law’s nature is often confused. Another question concerns the criteria, specific to each legal system, that determine whether or not a rule is a valid law within that system. An account of those criteria will, according to Hart, set out the “rule of recognition” of that system. Such an account does not answer the question “what is law?” but the different question “what is *the* law within this system?” Finally, there are questions concerning the law’s binding or justificatory force. In *The Concept of Law*, Hart appeared to regard these latter questions as not needing to be addressed within the context of an inquiry into the nature of law. Rather, he saw them as raising a moral issue that was separate and distinct from questions concerning the nature of law or legality. In later work, he seemed to realize that his own argument (e.g., his criticisms of John Austin’s account of legal obligation) already assumed law’s justificatory force, and he therefore argued that the law’s intrinsic justificatory force is of a merely technical and confined sort. The invocation of laws in justification of a judicial decision, for example, consists simply in the subsumption of the case under a legal rule, without addressing the question of whether the decision of the case by reference to such a rule was itself morally justifiable.²²

The key notion in Hart’s theory is the “rule of recognition.” This is not simply the idea of a basic accepted rule that identifies the sources of law within that particular legal system. For the theory presents the rule of recognition as calling into being a new way in which rules can be said to exist. In the absence of a rule of recognition, the social existence of a rule consists in a regular pattern of conformity to the rule, combined with an attitude of acceptance which regards the rule as a standard that ought to be complied with. But, while the rule of recognition itself exists in that sense (being a practice of “officials” within the system), the rules that stem from sources identified by the rule of recognition exist in the different sense of being “valid.” “Validity” is purely a matter of derivability from the basic rule of recognition, and Hart portrays the law as exclusively made up of valid rules.

These facets of Hart’s theory present legal thought as essentially an exercise in rule application. The application of

²¹ Hart, op. cit. n. 20 above, p. vi.

²² H. L. A. Hart, *Essays on Bentham* (Oxford 1982), p. 266.

the rule of recognition, and the valid rules stemming from it, does not require any consideration of the philosophical problem of law's nature. In this way, the reflexive character of legal thought is implicitly denied. At the same time, the theory of the rule of recognition seems to resolve the problem of infinite regress, since the law's authorization of sources of valid law finds a stable resolution in the rule of recognition. The rule of recognition is not itself a valid legal rule: indeed, it cannot be, since it is the ultimate criterion of legal validity. The concept of legal validity (that being the specific form in which law exists for Hart) obtains solely within the context of a basic rule of recognition, so that the latter rule is itself neither valid nor invalid: it is simply an accepted practice of officials.

For Hart, the rule of recognition is not simply an accepted rule whereby the basic sources of law within a system are identified: it is also, as it were, the outer bounding limit of specifically juridical thought. This view is but one facet of Hart's implicit denial of the reflexivity of legal thought, understood as the way in which legal thought is ultimately guided by reflection upon the nature of law itself. Thus, Hart would wholly reject the suggestion of Ronald Dworkin that jurisprudence (i.e., philosophical inquiry into law's nature) is the "silent prologue to any decision at law," or Lon Fuller's picture of law as always "in quest of itself."²³

The idea that legal thought is guided by reflection upon the idea of law can seem puzzling, and that can lead people to conclude that the denial of law's reflexivity is a desirable clarification. But we are already familiar with similar manifestations of reflexivity in our moral lives. Take, for example, the relationship of friends. It is an essential feature of friendship that those who are genuinely friends should value their relationship. Thus, one friend may reproach another by saying "Does our friendship mean nothing to you?" And, when confronted with tricky situations, friends find it natural to ask themselves what a good friend would do in such circumstances. There is a sense in which friendship, like law, is always "in quest of itself."

In his *Lectures on Ethics*, Kant makes the following observation:

When therefore Socrates remarks 'My dear friends, there are no friends', he implies that there is no friendship that fully conforms to the Idea of friendship. And he is right, for any such absolute conformity is impossible; but the Idea is true.²⁴

The assertion which Kant attributes to Socrates is, of course, intended to highlight the appearance of paradox within the thesis that Kant then goes on to clarify. Friends count as such by their approximation to, and orientation towards, an ideal that their relationship can never fully realize. The idea of friendship is therefore a practical reality both in the sense that it ought to guide our conduct towards our friends, and in the sense that the daily realities that surround us (the existence of friends) cannot be fully understood without a grasp of the idea. Governance by law can itself be viewed as a manifestation of civility, or civic friendship. It is always to be understood in relation to the idea which it imperfectly embodies. As I have argued elsewhere,²⁵ governance by law, so far as it approximates to its immanent idea, confers upon the citizen a degree of freedom, understood as independence from the power of others, which can be enjoyed in no other way while living in a human community.

Conceptions and Ideas

Recall for a moment the remarks of Gustav Radbruch that were quoted above: "Law is the reality whose sense is to serve the value of law, the idea of law," and that "Law is the reality whose sense is to serve justice." Notice how Radbruch equates "the idea of law" with "the value of law," and distinguishes between the "reality" of law and the "idea" which it serves. That idea is at one point said to be "justice," and at another point said to be "the idea of law." Remarks of this sort will seem puzzling to most Anglo-American legal theorists. At best, they are likely to seize upon the distinction between the "reality" and the "idea" while neglecting the thought that the "reality" may be intelligible only by reference to its implicit idea. More probably, they are likely to view Radbruch's claims as vaporous rhetoric that lacks any very precise meaning. But his assertions are in fact indicative of a completely different approach to jurisprudence, and one from which we have much to learn. Our reflections can begin by considering some famous observations of Samuel Taylor Coleridge.

In his 1815 book *Aids to Reflection*, Coleridge spoke of words as "living powers, by which the things of most importance to mankind are actuated, combined, and humanized."²⁶ He thereby gave clear expression to a view that was transforming our self-understanding. For it was the Romantic generation, of which Coleridge was a part, that first began clearly to grasp the creative power of language.²⁷ They saw that

²³ Ronald Dworkin, *Law's Empire* (London: Fontana 1986) p. 90; Lon Fuller, *The Law in Quest of Itself* (Chicago: Foundation Press, 1940).

²⁴ Kant, *Lectures on Ethics*, translated by L. Infield (London: Methuen 1930) p. 202.

²⁵ Simmonds, *Law as a Moral Idea* (Oxford University Press 2007). See also Simmonds, "The Bondwoman's Son and the Beautiful Soul" (2013) 58 *American Journal of Jurisprudence* 111.

²⁶ Samuel Taylor Coleridge, *Aids to Reflection* (1825), edited by John Beer (London: Routledge and Kegan Paul, 1993) p. 10.

²⁷ See Charles Taylor, "The Importance of Herder" in Taylor, *Philosophical Arguments* (Cambridge, Mass.: Harvard University Press

language has a constitutive role: it does not merely describe or classify the objects that we encounter, but calls such objects into being. Indeed, humans inhabit a world which is filled with objects of thought that are the creations of language. A fully human life is unimaginable without that aspect. And a fully civilized life is unimaginable without the transformations that are integral to governance by legal process and juridical ideas. Those transformations are suggested by Aeschylus's play *The Eumenides*, where the Furies are renamed the “kindly” or “gracious” ones on agreeing to accept and be bound by the decision of a lawful Athenian jury.

A little later, in his famous 1830 essay *On the Constitution of Church and State, according to the Idea of each*, Coleridge was to distinguish “conceptions” from “ideas.” According to Coleridge, “conceptions” bring “any given object or impression into the same class with any number of other objects or impressions by means of some character or characters common to them all.” In other words, “we comprehend a thing, when we have learned to comprise it in a known class.” Ideas, on the other hand are “not abstracted from any particular state, form, or mode, in which the thing may happen to exist at this or at that time; nor yet generalized from any number or succession of such forms or modes.” Rather, an idea is “given by the knowledge” of a thing’s “ultimate aim.”²⁸ We might say that, whereas conceptions form a part of our general effort to classify and order phenomena, ideas are an aspect of our status as agents seeking orientation within a world of values, choices, and responsibilities. Conceptions aim to categorize on the basis of similarity, while ideas render our experience transparent to practical reason by revealing a deep coherence underlying the features of seemingly disparate goals, actions, and practices. Coleridge was one of the first English scholars to immerse himself in the German philosophical writings of the period, and his brief remarks concerning “ideas” are a rare appearance in the English literature of a strand of thought which was to play a significant role within German philosophy of law, but has been largely absent from Anglo-American jurisprudence.

Coleridge’s phrase “ultimate aim” must, I think, be construed in a broad sense which would encompass values that the institution in question embodies, expresses, or honors. The notion of an “aim” should not be identified exclusively with states of affairs that are to be advanced instrumentally.

“Ideas,” in the relevant sense, offer us a grasp of aims that are complex, resistant to any simple reduction, and internal to particular practices. The aim cannot be fully envisaged in advance nor envisaged independently of the practice. Its nature is clarified and rendered determinate through our engagement in the practice and, ultimately, our reflection upon the idea that the practice embodies. While such practices can be engaged in unreflectively, they inevitably invite reflection and can become a focus for philosophical debate.

We should also be careful to avoid the assumption that “conceptions” and “ideas” are entirely distinct. On the face of things, Coleridge’s explanation of “conceptions” seems wholly unconvincing. As common characteristics can be identified only by reference to an existing conceptual framework, the identification of common characteristics can scarcely explain the formation of such a framework. Coleridge here seems to remain under the influence of associationist psychology. But, wisely dispensing with such a psychological theory, we should be open to the possibility that “conceptions” are but the shadow of “ideas.” Perhaps the “idea” provides the archetype by reference to which instances are categorized, while “conceptions” seek to trace the boundary beyond which an “object or impression” can no longer be regarded as reflecting the idea.

What seems clear is that, for Coleridge, “ideas” are a part of the unarticulated practical knowledge which forms the background for our actions: they are an integral part of the structure of mutual understandings on which social life depends. Whereas a conception “consists in a conscious act of the understanding,” the “knowledge, or sense” which is an “idea,” “may very well exist, aye, and powerfully influence a man’s thoughts and actions, without his being distinctly conscious of the same, much more without his being competent to express it in definite words.” Ideas, in Coleridge’s view, permeate our social fabric, and a human society cannot be understood without a sensitive awareness of the ideas that inform it. Thus, he tells us that anyone who hears laborers in an alehouse “discussing the injustice of the present rate of wages, and the iniquity of their being paid in part out of the parish poor rates” might recognize the idea of the social contract working tacitly within their thoughts. For that idea “constitutes the whole ground of the difference between subject and serf, between a commonwealth and a slave plantation”; and it in turn “evolved out of the yet higher idea of a *person*, in contradistinction from thing — all social law and justice being grounded on the principle that a person can never, but by his own fault, become a thing, or, without grievous wrong, be treated as such.”²⁹ Coleridge

Footnote 27 (continued)

1995); Taylor, *The Language Animal* (Harvard University Press 2016); Taylor, *Cosmic Connections* (Harvard University Press 2024).

²⁸ Samuel Taylor Coleridge, “On the Constitution of the Church and State, according to the Idea of each” (1830) in *Collected Works of Samuel Taylor Coleridge: Volume 10*, edited by John Cromer (Princeton University Press 1976) Chap. 1, pp. 12–13.

²⁹ Coleridge, op. cit. n. 30 p. 16. It is important to notice here that Coleridge’s remarks here suggest a view of the social contract as resting upon, or embodying, the mutual recognition of persons. This should be contrasted with the more typical Anglophone conception

suggests that we can be “possessed by” ideas of which we lack “possession.”³⁰

The analogy is very far from perfect, but we might usefully think of ideas as analogous to notional points in space which unite the perspectival lines structuring and giving coherence to our understanding of a picture. Like such a notional perspectival point, the idea enables us to grasp the relationship between seemingly diverse things. Much more significantly, it is a representation of infinite depth: it indicates a location which is forever unattainable, but which can represent (within our apprehension of the scene) a direction in which we might travel. And it is a reality of human practical or ethical experience in the same way that perspective is a real feature of our visual experience. In this way, ideas can render transparent to reason those features of human association which would otherwise remain implicit and inchoate. To deny the role of ideas within human experience would be to strip that experience of many of its familiar features. It would be analogous to a denial of perspective as a feature of human experience on the grounds that there is no actual point at which parallel lines meet.

Denying Reflexivity

Hart’s implicit denial of the reflexivity of legal thought is analogous to such a denial of perspective as a feature of human experience. It leads rapidly to crude distortions. Those distortions and inadequacies first appear in Hart’s own work, and become more obvious in the work of Joseph Raz, who explicitly asserts the denial of reflexivity which is merely implicit within Hart’s theory.³¹

In Hart’s theory, as explained above, the rule of recognition is the outer bounding limit of juridical thought. Once a lawyer has identified “valid” rules by applying the rule of recognition, there are no further specifically juridical questions to address. But the discourse of law can suggest otherwise, giving rise to the illusion (as Hart would see it) that law is something other than the body of rules stemming from the rule of recognition: it may appear to be an ideal edifice, arrived at by reflection upon the idea of law, rather than a mere assemblage of materials identified by the rule of recognition. The illusion arises from the fact that rules,

according to Hart, have an “open texture”: they may have a “core of settled meaning,” where most people would agree about the rule’s applicability, but they are also likely to give rise to “penumbral” situations where people are unable to agree about the applicability or inapplicability of the rule. In such penumbral situations, the law (which consists entirely of rules derived from the rule of recognition) cannot yield an answer to the question of the rule’s applicability. Such situations, therefore, can only be resolved by a court taking a decision as to the rule’s applicability, and such a decision must, of necessity, be based upon non-legal grounds (such as considerations of social policy). Since the distinction between core cases and penumbral cases is a continuous distinction, unmarked by any clear watershed, lawyers and judges unavoidably discuss both types of case as if they were applications of the law. But jurisprudential analysis reveals this not to be the reality.

Hart’s distinction between the core and the penumbra is simply a distinction between situations where most people will agree about a rule’s applicability, and situations where they will disagree. But he tells us little or nothing about the factors that shape this pattern of convergence and divergence. With a surprising degree of understatement, he informs us that “it is a matter of some difficulty to give an exhaustive account of what makes a ‘clear case’ clear or makes a general rule obviously and uniquely applicable to a particular case.”³² Such casualness leaves open the possibility (which, in my view, is also the reality) that judgements concerning the applicability of legal rules are usually (and rightly) shaped by the understanding that law exists to serve justice and to realize the idea of law itself (very much in the way envisaged by Gustav Radbruch).

Consider, for a moment, Coleridge’s observation that we can be “possessed by” ideas of which we lack “possession.” This seems to be a very apt description of our relationship to the idea of law. For we have already seen how that idea holds a prominent and profoundly significant place within the understandings making up our form of political association, and we have also seen how it is difficult for us to form a clear and coherent picture of the relevant idea, given the puzzles which seem to be generated by the various constitutive assumptions that define its structure. Nor am I alone in being struck by the deep suggestiveness of Coleridge’s language. Citing Coleridge, Ernest Weinrib speaks of lawyers as “possessed by the idea of that which they are trying to understand, so that this idea is not only the object of their attentions but the subject that animates them to work toward its

Footnote 29 (continued)

of it as a mutually beneficial arrangement between fully formed and self-seeking individuals.

³⁰ Coleridge op. cit. n.30 p. 13.

³¹ See my discussion in Simmonds, “Law as an Idea We Live By” in George Duke and Robert P. George (eds.), *The Cambridge Companion to Natural Law Jurisprudence*, (Cambridge University Press 2017), pp. 251–256.

³² Hart, *Essays in Jurisprudence and Philosophy* (Oxford University Press 1983), p. 106.

realization.”³³ As we have already seen, Coleridge’s “ideas” form part of the unarticulated practical knowledge that orients our being in social space. They are often reflected in shared understandings that seem firmly in place, yet hard exhaustively to explicate. We can often find confident agreement about what falls significantly short of the idea, while nevertheless experiencing deep uncertainty about what would perfectly instantiate the idea (compare, for example, the way in which our confidence regarding clear instances of injustice contrasts with our deep uncertainty concerning the nature of perfect justice). In relation to such ideas we might say, with Collingwood, that “The way to discover the proper meaning is to ask not ‘what do we mean?’ but ‘what are we trying to mean?’”³⁴ If we think of Coleridgean ideas as focal points that draw together into coherence a diversity of our practices, the quest to understand such ideas corresponds to what Lon Fuller described as the collaborative articulation of shared purposes.³⁵

It is in the light of Lon Fuller’s work that we can grasp the failure of Hart’s theory. In his book *The Morality of Law*,³⁶ Fuller tells us a memorable fairy tale concerning a King who sets out to become a great lawmaker, but whose attempts at lawmaking all go awry in a variety of ways, to such an extent that he never succeeds in making any laws at all, even of a defective and unsatisfactory sort. The story serves a number of instructive purposes, one of which is to identify eight very settled intuitions that we share concerning the idea of law. For that purpose, Fuller might have skipped the story and simply invited us to consider eight imaginary forms of governance, all of which would be agreed to fall short of being instances of law. Thus, a system where there are no rules at all would not be considered to be a legal system; nor would a system where all of the rules are exclusively retrospective, governing only situations that had already occurred prior

to the enactment of the rules. The same applies to a system where the rules are prospective but unpublished, their contents being kept secret; or a system where the rules are published but unintelligible; or where the rules are constantly changing; or where every rule seems to be contradicted by other rules; or where there are published, clear, prospective rules, but the officials of the system never act in accordance with the rules; and so on.

Obviously, one would never encounter actual instances of governance which resembled these imaginary examples. But they are nevertheless significant. For, taken together, they reflect an ideal for law that we find very familiar (although the ideal’s precise content is much contested). It is the moral and political ideal that we usually call “the rule of law.” Fuller’s understanding of that ideal is often seen as a simple list of eight distinct requirements. But Fuller was very well aware of the fact that fidelity to a moral idea requires more than such a list. He draws upon Aristotle’s observation that, although there are established rules for just dealing which can easily be learnt, experience shows us that the application of such rules to the circumstances of human life demands sound judgment informed by the kind of moral wisdom that is the fruit of experience.³⁷ Similarly, Fuller explains, his eight requirements should not be thought of as discrete for they “do not lend themselves to anything like separate and categorical statement.”³⁸ They are not distinct requirements, but various aspects of a single aspiration. Moreover, those various aspects, in the circumstances of the real world, give rise to conflicting demands, so that “the utopia of legality cannot be viewed as a situation in which each desideratum of the law’s special morality is realized to perfection.”³⁹ Some degree of shortfall from the core aspiration of legality seems, therefore, inevitable. Yet too great a shortfall results in something that is not law at all.

Legal positivists generally regard “the rule of law” as a moral or political ideal that is of special relevance to legal systems, but they do not regard an understanding of that ideal as integral to our understanding of law’s nature. Fuller’s argument, however, shows us how a sufficiently dramatic shortfall from this ideal results in something that no one would regard as an instance of law. That discovery enables us to grasp how our understanding of the idea of law may reflect our inchoate moral understandings of a political ideal, rather than simply our settled semantic intuitions. Fuller’s point is that systems of governance constitute instances of law only when they approximate to some degree to the ideal of the “the rule of law,” and that ideal is a guiding aspiration for legal thought. In being guided by such an aspiration,

³³ Ernest J. Weinrib, *The Idea of Private Law*, revised edition (Oxford University Press 2012), p. 15.

³⁴ RG Collingwood, *The Principles of Art* (Oxford University Press 1938), p. 7.

³⁵ Lon Fuller, “Human Purpose and Natural Law” (1956) 53 *Journal of Philosophy* 697 at p. 702. See also Philip Selznick, “Sociology and Natural Law” (1961) 6 *Natural Law Forum* 84. Selznick assimilates sociology to natural law thought, saying that both look “beyond what is given and immediate to what is latent and inchoate.” He points out that sociology emerged as part of a revolt against “an atomist, individualist image of man” and a view of society “as the dependent variable, created by human beings endowed ab initio with mind and self.” Consequently, he views such things as friendship, scholarship, democracy, and citizenship as contexts where “Behaviour, feeling, thought, and organisation are all bound together” by their relationship to what he calls “master ideals.” It is impossible, he tells us, “to understand any of these phenomena without also understanding what ideal states are to be approximated.”

³⁶ Lon Fuller, *The Morality of Law*, revised edition (Yale University Press 1969).

³⁷ Fuller, op.cit. p. 94; Aristotle, *Nicomachean Ethics*, Book V.

³⁸ Fuller, op.cit. p. 104.

³⁹ Fuller, op.cit. p. 45.

legal thought takes on a reflexive character: law is, as Fuller puts it, “in quest of itself.” Moreover, law is forever touched by the “pathos of incompleteness,” being suggestive of ideals that go beyond its quotidian reality.⁴⁰

Now consider Hart’s implicit denial of law’s reflexivity. According to Hart’s theory, doctrinal legal thought (that is, thought that aims to expound and apply the existing law) is wholly independent of philosophical reflection upon the nature of law. On this picture, lawyers identify the law by applying the basic “rule of recognition” of their system. The judge’s legal duty is a duty to apply the rule of recognition and the rules stemming from it.

But, in the light of Fuller’s story, we can see that derivability from a basic rule of recognition will confer a legal character upon the rules so derived *only* if the system in question is a legal system. And this it might fail to be. Consider, for example, a system where the rules derived from the basic rule of recognition are kept secret from the public, or are unintelligible, or entirely retrospective, or constantly changing (and so on, following Fuller’s other examples). From this, an important point follows. For we can now see that the judge’s fundamental duty is not the duty to follow a basic rule of recognition, but something broader and more closely bound to philosophical reflection upon law’s nature: it is a duty of fidelity to the idea of law (the duty to apply the rule of recognition being merely one aspect of this wider and deeper duty of fidelity). And the full content of that idea is, unavoidably, a matter for debate.

For we should not imagine that a finally adequate understanding of the idea of law is provided by Fuller’s account of our settled understandings of what most certainly will not, and should not, be regarded as law. Since the nature of law has been the subject of a long-enduring philosophical debate, we should expect it to invite a path of approach that Collingwood described as having been “repeatedly used throughout the history of philosophy.” To follow that path towards the understanding of a philosophically puzzling concept, “it is necessary first to think of that concept as specifying itself in a form so rudimentary that anything less would fail to embody the concept at all.” This, in effect, is what is provided by Fuller’s settled understandings. Later, Collingwood explains, we must add “new determinations, each implied in what went before, but each introducing into it qualitative changes as well as additions and complications.”⁴¹

Fuller never really succeeded in explaining the value inherent in governance by published, prospective, rules of

the sort envisaged in his settled understandings. I have elsewhere argued that the relevant value is the value of freedom as independence from the power of another: the type of freedom that consists, not in the number or extent of one’s options, but in the independence of those options from the will of other people. To the extent that one is governed in accordance with Fuller’s desiderata, one enjoys a degree of freedom as independence that can be enjoyed in no other way, while living in a human community.⁴² But, as we reflect more deeply upon this insight, we discover that the idea of law is intimately connected with the idea of justice. The two ideas are, on the one hand, independent of each other (so that justice may conflict with legality) but are also bound to each other, in the sense that each of the two values can be fully achieved only in conjunction with the other.⁴³ This helps to explain the “pathos of incompleteness” attaching to instances of unjust law.⁴⁴

As we saw earlier, Hart suggests that, while rules will have a “core of settled meaning,” they will also have a “penumbra of uncertainty,” where the applicability of the rule can only be decided by reference to factors lying outside the rule itself. At one point in *The Concept of Law*, Hart considers situations where the rule of recognition itself exhibits such penumbral uncertainty, and particularly where the uncertainty in question bears upon the extent of the court’s own authority and jurisdiction. Here, Hart suggests, “all that succeeds is success.”⁴⁵ Furthermore, he tells us, the success of the courts in gaining acceptance for “these striking developments by courts of the most fundamental rules” is, in large part, “the prestige gathered by courts from their unquestionably rule-governed operations over the vast central areas of the law.”⁴⁶ This seems to mean that, in Hart’s view, the courts can succeed in deciding these most fundamental issues only because the public confuse such decisions with more typical adjudicative judgments that apply the law, or are clearly authorized by law. They assume that the court is applying pre-existing law and accept the court’s decision for that reason.

An alternative approach to the judicial decision of fundamental constitutional questions would allow for the possibility that, even when the case is not clearly governed by

⁴⁰ On this theme, see Simmonds, “Law, Reason and Celestial Music,” *New Essays on the Fish-Dworkin Debate*, edited by Thomas Bustamante and Margaret Martin (Oxford: Hart 2023).

⁴¹ R. G. Collingwood, *An Essay on Philosophical Method* (Oxford University Press 1933), pp. 100–101.

⁴² Simmonds, *Law as a Moral Idea* (Oxford University Press 2007). See also Quentin Skinner, *Liberty as Independence*, (Cambridge University Press 2025). For some reservations, see Simmonds, “Law as an Idea We Live By” in George Duke and Robert P. George (eds.), *The Cambridge Companion to Natural Law Jurisprudence* (Cambridge University Press 2017), p. 245 at p. 261 n. 32.

⁴³ Simmonds, *Law as a Moral Idea* (Oxford University Press 2007), pp. 195–198.

⁴⁴ See Williams, n. 7 above.

⁴⁵ Hart, op. cit. n. 21, p. 153.

⁴⁶ Hart, op.cit. n. 21, p. 154.

some established legal rule, it may still be resolvable in a manner consistent with the court's duty of fidelity to *the idea of law*.⁴⁷ That idea requires governance by published, prospective, rules complying to a substantial extent with the various requirements spelt out by Fuller's theory. The resonance of the idea may extend somewhat further. For, as we have seen, many jurists have sensed a close association between the ideas of law and of justice, so that the interpretation and exposition of law generally proceeds on the assumption that law is a good faith attempt at articulating the requirements of justice. When the law falls seriously short of justice, or departs from the ideal of governance by clear published rules (by, for example, relying extensively upon official discretion), we inevitably view it in the light of "the pathos of incompleteness." The idea of law is therefore the guiding idea of legal thought, and governance by law is governance by reference to that idea.

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⁴⁷ Thus, the German Federal Constitutional Court has said that it derives its authority "not merely externally from the Constitution" but also "from the very idea of law": see Alexy, *A Theory of Constitutional Rights*, translated by Julian Rivers (Oxford University Press 2002) pp. 8–9.