Singapore Journal of Legal Studies
[2024] 321–322

BASIC LEGAL POSITIONS

PREFACE

David **Duarte**[*] & Andrew **Halpin**[**]

The papers published in this special issue were initially presented at the inaugural meeting of The Research Forum on Basic Legal Positions held in Lisbon in September 2023. The Research Forum on Basic Legal Positions has been established as a joint venture by Lisbon Legal Theory (a research cluster within the Lisbon Public Law Research Centre in the University of Lisbon) and the Centre for Legal Theory (Faculty of Law in the National University of Singapore). Its aim is to promote the investigation of elements common to all legal systems at the level of individual legal positions, where a party's conduct is normatively regulated by the law. The analysis of such positions clarifies practical legal problems, informs a scientific understanding of law, and illuminates normative controversies over the status individuals should enjoy under the law. The forum provides a collaborative environment in which civilian and common-law scholars can address theoretical issues of fundamental concern to all contemporary legal systems.

In our view, the articles that follow adequately illustrate the importance, both theoretically and practically, of the different levels of investigation or lines of inquiry that the subject matter of basic legal positions promotes. We start with Giorgio Pino's "The Puzzle of Inalienable Rights", in which he uses a Hohfeldian conceptual framework to explore the conditions under which it is conceptually possible to talk of inalienable rights. He introduces a more sophisticated analysis of inalienability, including recognition of the significance of disabilities and duties for inalienable rights.

In her article, "Interest-Based Rights, Peremptoriness, and Exclusionary Reasons", Adina Preda interrogates the view of human rights possessing peremptory force due to the valuable interest of the right-holder. She provides a powerful critique of a Razian justification of rights, and poses a fundamental challenge to the practice of invoking rights when what is at stake could more accurately be described as the protection of interests. This is followed by Pablo Navarro's contribution, "Legal Reasons, Normative Determinacy, and Rules of Closure", in which he produces a technically rigorous and refreshing assessment of Raz's notion of conclusive legal reasons. He finds that Raz's arguments for denying the existence

[*] University of Lisbon.
[**] National University of Singapore.

of genuine gaps in the law based on his conception of conclusive permission are unconvincing. Gopal Sreenivasan's "Rights *in rem* and the Multital Ménagerie" investigates what is often regarded as an oddity of Hohfeld's analysis, his multital approach to rights *in rem*. In particular, he responds to James Penner's challenge to Hohfeld on the epistemic demands of the multital approach. Sreenivasan shows how Hohfeld's treatment of rights *in rem* can be amended to avoid Penner's critique.

María Beatriz Arriagada confronts the ontological issue of whether legal positions are reducible to legal norms, in raising the question, "Do Legal Positions Exist?". By drawing a careful distinction between different types of reduction, and observing a relationship between the meta-discourse of legal theory and the specialised discourse of participants in the internal legal culture, she reaches an affirmative answer to her question. A different perspective can be found in David Duarte's investigation of "Immunities as Mere Propositions about the Law", concentrating, as it does, not on the practical discourse of law but on a demanding analysis of the relationship between a legal position and its normative source. The conclusion reached in his tightly argued article is that it is not possible to have a "norm of incompetence"; and consequently, to speak about an immunity as a legal position is to confuse norms with norm propositions, and to falsely attribute significance to a mere deontic nothingness.

In the final article, "Analytical, Normative, Aspirational: Connecting and Disconnecting Theoretical Approaches to Rights", Andrew Halpin explores the scope of descriptive and normative work in legal theory, and argues for the recognition of aspirational-normative work among the different roles a theorist can perform. A classification of theoretical approaches to rights is produced to reveal where intelligible discourse between them is, or is not, possible.

We are grateful to our fellow contributors whose work serves to elucidate, and sharpen the appetite for further discussion on, matters where basic legal positions are involved. We are also grateful to a number of other people whose valuable assistance at various stages resulted in the success of the inaugural meeting in Lisbon, and made the process of bringing the papers to publication in this special issue a far more pleasurable experience for us than we could have contemplated.

The editors of the Singapore Journal of Legal Studies have been encouraging and supportive of the idea of this special issue from the outset. We are grateful to the student editors for their assistance in revising drafts of the articles into house style. Particular thanks are due to Sandra Booysen, whose advice and help has considerably lessened any burdens we might have otherwise experienced as guest editors.

We acknowledge with gratitude the financial support of the Lisbon Public Law Research Centre and the *Fundação para a Ciência e a Tecnologia, I.P.* (under the project UIDP/04310/2020).