

## From the Editors

In his famous *Law, Liberty, and Morality* H.L.A. Hart formulates four main questions that concern the relation between law and morality. The first one concerns the historical and causal relation between law and conventional morality, the second one is whether some reference to morality should be included in an adequate definition of law, the third one is about the possibility and forms of moral criticism of law, and the fourth and final one is about legal enforcement of morality.<sup>1</sup> These four different, although related, questions mark the powerful return of the issue of law and morality in analytic philosophy, a return that was exemplified by Hart's introduction of his sophisticated model of legal positivism. This positivism recognizes the important, even crucial role that ethical critique of law plays in political processes of the improvement of legislation.

Rejecting any analytic link between valid law and morality, Hart argues in favor of explicit ethical and political critique of law relating to both legal and moral *conventions*. Therefore, his legal positivism shares with the tradition of natural law the fundamental belief in the possibility of rational critique of social conventions (be they moral or legal). As is well known, Hart views utilitarianism as the most valuable normative model for such critique of moral conventions and he uses the writings of Bentham and Mill in order to critically approach the English legislation on homosexuality.

Since Hart's time many important contributions have been made to the analysis of the relation between law, morality and ethics, the latter understood as the critical level of morality. Not the least of these was the nuance and reframing that was added to the controversy between legal positivism and natural law. However, there is a persistent challenge of involving more professional ethicists in the philosophical and theological analysis of law. Such an involvement is not just a matter of quality of the theoretical enterprise. It is also timely if we take into consideration the dramatic global growth of nationalism followed by legislative initiatives that seek to reduce rights and liberties of the most vulnerable groups and individuals.

In this issue of *De Ethica* we present two articles that make substantial contributions to the philosophical critique of law. The first one, written by Michael Joel Kessler, scrutinizes the potential of Mill's understanding of prevention of harm as the only legitimate purpose of restriction of individual freedoms. The article is titled 'A Puzzle about Obscenity' and deals with the challenge of legal regulation that aims at prohibition of obscene pornography. Starting with an analysis of some American courts' rulings on pornography, Kessler develops an argument against moral harm as a fruitful tool for legal approach to conflicting rights. In his conclusion, he proposes to abandon the legal concept of obscenity.

<sup>1</sup> H.L.A. Hart, *Law, Liberty, and Morality* (Stanford: Stanford University Press, 1963), pp. 1-4.

Johan Rochel's contribution is titled 'Towards a Legal Turn in the Ethics of Immigration'. Rochel argues in favor of the idea that there are legal principles, i.e. general and foundational legal norms. Such principles, he states, offer a firm platform for a meaningful ethical contribution to the legal debate. In the article the principle of proportionality is discussed and applied to the analysis of the European legislation on immigration. Rochel argues that ethicists can and should use interpretative and critical resources within the law rather than critically approach law from distinctively ethical and philosophical perspectives.

We hope that this issue will enrich the ongoing international discussion about law and ethics. Most importantly, we hope that it demonstrates that there is a need for a continuing search for efficient ethical tools for critical scrutiny of law.