

ATLANTA'S JOHN MARSHALL LAW SCHOOL

JURISPRUDENCE

"I will answer you by quoting what I have read some where or other, in Dionysius Halicarn, I think, that history is philosophy teaching by examples...."

Henry St. John Lord Bolingbroke
The Study and Use of History (Letter 2)
1752

"and also warning...."
James A. Garfield

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Spring Semester, 2015; Three (3) Credit Hours
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COURSE FOCUS

I suppose the gist, impetus, essence and thesis of this study might reasonably be summed up in the following two-word sentence, simply put, yet far more complexly contemplated and considered: jurisprudence matters. *Jurisprudence matters.*

By *jurisprudence*, I mean to reference not merely the prosaic of that term – the philosophy, and even the *science*, of 'law' – but rather to imagine it in its separable elements: *juris*, or, simply, *of right*, and *prudentia*, or *sober* (i.e., *careful*; *wise*) *foresight*. My intended use of the term here anticipates the preferred German form, *rechtswissenschaft*, which compounds *recht* ('right') with the concept of knowledge or folkloric wisdom ('*wissen*') beyond the more mundane *science* or *scholarship* ('*wissenschaft*'). In both cases the term offers in its broad form an almost generic, pedestrian meaning for the dabbler, while hinting at a far deeper and richer set of interlocking concepts in its constituent elemental forms, for the more attentive. Thus, by referencing 'jurisprudence' in this study, I am less concerned about a broad and amorphous set of rules underlying legal reasoning, then about a careful consideration of the legal ideation and manifestation of *rights*, or even *the right*. Here, then, *jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia*.ⁱ jurisprudence is the knowledge of things

divine and human, the science of what is *right* and what is *wrong*;ⁱⁱ the reasons for this preference and its natural implications should become clear very early in our consideration of the term.

More compelling is what is meant by my preference for the term '*matters*' here. Indeed, to the student of some generations ago, given the above definition of the first term, the deeper meaning of this second term was a 'given' of sorts, built into the foundational notions of *right* and *wrong*. However, as the study has naturally moved into more modern times and considerations, it has *changed*, both its name – from *jurisprudence* to the less freighted and more clinical and antiseptic *legal theory* – and its focus, from 'wisdom literature' to more abstract considerations of the nature of law. To contemporary legal theorists, then, the belief that law is a form of "wisdom" rather than instrumental rules for effectuating the organization of society is an unwarranted presupposition. Different than their older counterparts, who studied jurisprudence as a way of 'perfecting' society, contemporary theorists seek to understand law from a variety of morally neutral perspectives – philosophy, social sciences, literary methods and the like – as an end in itself. Thus, in considering the simple, complex two-word thesis sentence of our study outlined above, for the modern theorists the emphasis would be clearly, almost exclusively, on the first word, '*jurisprudence*', while the ancient students would focus their full attention on the second: *matters*.

Who's right, and why should we (aspiring lawyers) care? In considering that important question, our study will naturally fall into two parts, dividing our semester nicely. Our first focus will be on *jurisprudence*, and the goal here will be to gain a working knowledge of the great legal thinkers of western history: Aristotle, Augustine, Aquinas, Grotius, Hobbes and Locke, Montesquieu and Rousseau, and into modern times. Once we are comfortable with the broad swath of legal philosophy in the 'western tradition', we will then turn full and energetic attention on the latter issue, '*matters*', inviting into our study as teachers key persons at key moments in our rich history: Indians marched from our very place of study to Oklahoma in the 1830's; women arrested for the crime of 'voting' in 1872; two men in early 19th century America persecuted because of melanin content in their skin, and their very different and important fates following; a little bridge company in Boston in 1786 that 'changed the world'; an accused rapist in 1966 and an accused bank robber in 2000, and their experiences with 'law' and 'democracy'; and two 'homosexual sodomists', one in Georgia in 1986 and the other in Texas in 2003, and their lessons – taught and learned – about moral wrong/right and 'privacy'. Through all of this, it is our goal to craft a reasonable approach to the '*jurisprudence matters*' (?) question, and to more fully appreciate the importance of the question in each of our individual 'lives in the law'.

ⁱ LORD BRACTON, BRACTON DE LEGISBUS EST CONSUEUDINIBUS ANGLIAE _____.

ⁱⁱ I am not unaware of the jangling and garish effects such words as those emphasized here may have on the post-modern 21st century ear, and I mean no harm by it thereby. However, these notions and even the ancient

language in which they are remembered by Lord Bracton were very accessible to the 'founding fathers', the 'stars of this show', as it were, the ones who had the most immediately to lose or gain by their own remarkable work in the summer of 1787. For this reason I am comfortable with the reference even in this age, and beg the reader's patience as its precise implications become clear.