NEW YORK UNIVERSITY LAW REVIEW

SYMPOSIUM THE HART-FULLER DEBATE AT FIFTY

Foreword: Fifty Years Later

The Grudge Informer Case Revisited David Dyzenhaus

Positivism and the Inseparability of Law and Morals

Leslie Green

Philosophy, Political Morality, and History: Explaining the Enduring Resonance of the Hart-Fuller Debate Nicola Lacey

Better To See Law This Way

Liam Murphy

A Critical Guide to Vehicles in the Park Frederick Schauer

Positivism and Legality: Hart's Equivocal Response to Fuller Jeremy Waldron

Practical Positivism Versus Practical Perfectionism: The Hart-Fuller Debate at Fifty Benjamin C. Zipursky

The Resolution of Contested Elections in the U.S. House of Representatives: Why State Courts Should Not Help with the House Work

Kristen R. Lisk

The Costs of Waiver: Cost-Benefit Analysis as a New Basis for Selective Waiver of Attorney-Client Privilege

Mathew S. Miller

Rethinking the Narrative on Judicial Deference in Student Speech Cases Sean R. Nuttall

> Warrantless Location Tracking Ian James Samuel

Resetting Scales: An Examination of Due Process Rights in Material Support Prosecutions Benjamin Yaster

Volume 83



Number 4

October 2008

NEW YORK UNIVERSITY LAW REVIEW

VOLUME 83

October 2008

Number 4

CONTENTS

SYMPOSIUM: THE HART-FULLER DEBATE AT FIFTY

FOREWORD

FIFTY YEARS LATER

993

SYMPOSIUM

THE GRUDGE INFORMER CASE REVISITED

David Dyzenhaus 1000

Positivism and the Inseparability of Law and Morals

Leslie Green 1035

PHILOSOPHY, POLITICAL MORALITY, AND HISTORY:

EXPLAINING THE ENDURING RESONANCE OF THE HART-

FULLER DEBATE

Nicola Lacey 1059

BETTER TO SEE LAW THIS WAY

Liam Murphy 1088

A CRITICAL GUIDE TO VEHICLES IN THE PARK

Frederick Schauer 1109

Positivism and Legality: Hart's Equivocal Response

TO FULLER

Jeremy Waldron 1135

PRACTICAL POSITIVISM VERSUS PRACTICAL PERFECTIONISM:

THE HART-FULLER DEBATE AT FIFTY

Benjamin C. Zipursky 1170

NOTES

THE RESOLUTION OF CONTESTED ELECTIONS IN THE U.S.

House of Representatives: Why State Courts

SHOULD NOT HELP WITH THE HOUSE WORK

Kristen R. Lisk 1213

THE COSTS OF WAIVER: COST-BENEFIT ANALYSIS AS A New Basis for Selective Waiver of Attorney-CLIENT PRIVILEGE

Mathew S. Miller 1248

RETHINKING THE NARRATIVE ON JUDICIAL DEFERENCE IN STUDENT SPEECH CASES

Sean R. Nuttall 1282

WARRANTLESS LOCATION TRACKING

Ian James Samuel 1324

RESETTING SCALES: AN EXAMINATION OF DUE PROCESS RIGHTS IN MATERIAL SUPPORT PROSECUTIONS

Benjamin Yaster 1353

New York University Law Review (ISSN 0028-7881) (USPS 016181)

All articles copyright © 2008 by the author, except when otherwise expressly indicated. For permission to reprint an article or any portion thereof, please address your written request to the Law Review or the author.

Except as otherwise provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use, provided that: (1) copies are distributed to students at or below cost; (2) the author and journal are identified on each copy; and (3) proper notice of copyright is affixed to each copy.

Published by the New York University Law Review at 110 W. Third Street, New York, New York 10012, in April, May, June, October, November, and December. Editorial and General Offices are located at 110 W. Third Street, New York, New York 10012. Inquiries also are accepted by telephone at (212) 998-6350 and by FAX at (212) 995-4032. Periodicals postage is paid at New York, New York and at additional mailing offices.

Current subscriptions: \$50.00 (plus \$6.00 foreign mailing). Single issues: \$16.00 each (plus \$1.00 for optional first class mailing). Please enclose check with order. Bound sets, back issues, and older volumes may be ordered from William S. Hein & Co., Inc., 1285 Main Street. Buffalo, NY 14209-1987; prices may differ from those above. Orders may be placed with Hein by phone at (800)828-7571, via fax at (716) 883-8100, or by e-mail to order@wshein.com. Hein also carries the Law Review in electronic format at HeinOnline, http://www.heinonline.org.

Subscriptions are renewed automatically upon expiration unless the subscriber sends timely notice of termination. All notifications of change of address should include both old and new addresses, including zip codes. Please notify one month in advance to ensure prompt delivery.

Unless a claim is made for nonreceipt of issues within one year of the mailing date, the Law Review cannot replace those issues free of charge.

For information regarding subscriptions, please contact (212) 998-6590.

Postmaster: Send address change to the New York University Law Review, 110 W. Third Street, New York, New York 10012.

The Law Review invites the submission of unsolicited manuscripts. We regret that such manuscripts cannot be returned except if accompanied by a self-addressed, stamped

The New York University Law Review is printed on recycled paper.