

state politics, and more generally to anyone interested in this unique aspect of the U.S. political system.

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Creon's Ghost: Law, Justice, and the Humanities. By Joseph P. Tomain.
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Joseph Tomain's *Creon's Ghost* is an episodic meditation on a long-standing legal conundrum: whether (and if so, how) positive law is subject to override by some form of higher law. Tomain's project is to explore rather than to solve this problem, and in the process, to integrate the wisdom of the humanities with the theory and practice of the law.

"Creon's ghost" is a metaphor representing the inevitable conflicts that arise between positive law and higher law, together with the haunting question of how one should respond to positive law that one regards as unjust—that is, as inconsistent with one's conception of higher law. The nub of the problem at the heart of *Creon's Ghost* is this. Positive law is easily ascertainable, but it is unsatisfying because it is not necessarily just. Higher law, by contrast, is grounded in principles of justice, but it is frustrating because it is highly contestable and ultimately indeterminate.

Tomain's method in *Creon's Ghost* is to refine readers' understanding of the problematic relationship between positive law and higher law, and to begin a conversation between law and the humanities, by pairing humanities texts central to the Western tradition with works of legal philosophy and then using the insights gleaned from that comparison to understand a variety of constitutional law decisions of the U.S. Supreme Court.

Tomain begins, appropriately enough, with the tragic conflict between Creon (representing positive law) and Antigone (representing higher law) in Sophocles' *Antigone*. He pairs *Antigone* with H. L. A. Hart's exposition of legal positivism in *The Concept of the Law*, which denies any challenge to positive law based on higher law notions of justice. The conflict in *Antigone*, of course, ends badly for both Creon and Antigone, and this portends the larger tragedy: High stakes attend the conflict between higher law and positive law, yet a satisfactory resolution of the conflict is beyond one's reach.

Tomain builds on *Antigone* chronologically, analyzing the apparition of Creon's ghost in Plato's philosophy, with special emphasis on the "Allegory of the Cave" from the *Republic* (paired with

Ronald Dworkin's writings on legal philosophy); Aquinas's theory of natural law (paired with modern theories of natural law); Machiavelli's *The Prince* (paired with legal realism and critical legal theory); Harriet Beecher Stowe's *Uncle Tom's Cabin* (paired with Robert Cover's *Nomos and Narrative*); Oliver Wendell Holmes Jr.'s *The Path of the Law* (paired with Richard Posner's legal pragmatism); Martin Luther King Jr.'s *Letter from a Birmingham Jail* (paired with John Hart Ely's *Democracy and Distrust*); and concluding with the procedural justice theories of Stuart Hampshire and John Rawls. Along the way, Tomain discusses many of the hot points of the Supreme Court's jurisprudence on religious freedom, the death penalty, same-sex relationships, slavery, affirmative action, physician-assisted suicide, and the detention of terrorist suspects in the U.S. military prison at Guantánamo Bay.

For Tomain, the journey of Creon's ghost through law and the humanities illuminates three paths, all of which he finds to be unsatisfactory. One path would separate positive law and higher law, denying any obligation to align positive law with principles of morality or justice. Another path would unite positive law and higher law, insisting that all positive law be moral and just. These apparently easy solutions to the problem of Creon's ghost, Tomain argues, are too easy. The first path is unsatisfactory because people have a moral sense that makes them deeply uncomfortable with, and predictably resistant to, following laws they deem to be unjust or immoral. The second path is no better because of the difficulty in translating people's sense of morality and justice into sufficiently determinate higher law principles. Tomain's third path would finesse the defects of the other paths by subjecting positive law to norms of procedural justice instead of substantive justice. But according to Tomain, this third path disappoints as well, because a procedurally just process may generate a substantively unjust outcome. Tomain's prescription, in the end, is for readers to muddle through, drawing on the insights that each path offers, while remaining mindful of their limitations.

Tomain's modest and somewhat disconcerting conclusion itself resonates with a beacon of the Western humanities canon, Plato's Socrates. In the Socratic tradition, Tomain believes that true wisdom lies in understanding that an inability to reconcile positive law with higher law is inherent in the human condition. Thus, *Creon's Ghost*, like a Socratic dialogue, focuses on peeling away the pretension of conventional answers to enduring moral problems, rather than attempting to resolve them. Still, Tomain, with Socrates, believes that engaging in this search for an unknowable truth is essential to a life—in Tomain's case, a societal life—well lived.