

Book Notes: Laws Quandary, by Steven D. Smith

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BOOK NOTES

LAW'S QUANDARY. BY STEVEN D. SMITH. CAMBRIDGE, MASS.: HARVARD UNIVERSITY PRESS, 2004. Pp. xiv + 179. Notes, Index. \$45.00 hardcover.

BY JO-ANNA BRIMMER

In *Law's Quandary*, Steven Smith explores the dilemma facing the legal profession—whether legal discourse is just words. Modern legal thought lacks the “openness” inherent in the works of Holmes, Llewellyn, and Fuller; they expressed views beyond the purely professional, creating works connected with the world outside law. Despite the intrinsic openness, these works sought to distance law from metaphysics. In contrast, Smith contends that to evolve beyond this quandary, we must face the underlying metaphysical questions.

Part I asks, what is “law-talk,” if not words? A Socratic audit demonstrates that relevant ontological inventories provide an account of only basic aspects of law, suggesting that legal discourse may be just words, or may require the context of a different ontology. Part II continues the audit, framing it in a useful, albeit unusual, example—what if an alien arrives and asks to be shown “the law”? Is it merely the profession (lawyers, judges, courtrooms), or does it depend on something more fundamental, namely, “the law”? The results suggest an ontological gap between articulated beliefs and practical evidence, implying that law-talk is nonsense. Modern legal thought does little to counter this implication, as schools, including law and policy and law and economics, insist that law requires a supplement other than “the law.” Part III adopts a broader search for legal meaning, which Smith contends is equivalent to the “semantic intentions of an author ... *of some sort*.” None of the candidates, real or hypothetical, are capable of performing all requisite functions of “author(s) of the law.”

In Part IV, the author concludes that law exists in an ontological gap; legal discourse is just words. Further, Smith asserts that a diagnosis of nonsense is a positive thing for law; such perplexity will afford the profession an opportunity to better comprehend its inner workings, and perhaps in due course, fill the gap.
