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Revisiting Pepper v Hart

# REVISITING *PEPPER v HART* – Part 1

By

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*'Our misapprehension of the nature of language has occasioned a greater waste of time, and effort, and genius, than all the other mistakes and delusions with which humanity has been afflicted. It has retarded immeasurably our physical knowledge of every kind, and vitiated what it could not retard. The misapprehension exists still in unmitigated virulence; and though metaphysics, a rank branch of the error, is fallen into disrepute, it is abandoned like a mine which will not repay the expense of working, rather than like a process of mining which we have discovered to be constitutionally<sup>1</sup> incapable of producing gold.'*

Alexander Bryan Johnson, *A treatise on Language*, 1836.

## **Abstract**

Johnson's philosophical interests centred upon language, whose misunderstanding he regarded as responsible for endless confusion and error. He distinguished the 'sensible' meaning of terms, tied closely to the experiences to which they refer, from merely 'verbal' meaning. The sensible meaning of a sentence is given by what would now be thought of as the verification conditions or assertible conditions of a sentence, he said. But this can be termed free interpretation today, in the jurisdiction of the European Union (a civil law area of the world) to which the United Kingdom, a common law jurisdiction, belongs. This dichotomy raises its head today when English judges try to insert non-statutory interpretations to the law, making for challenges, though rarely correctly taken up by English lawyers.

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<sup>1</sup>But constitutions can be changed. See Adrian Vermeule, "Constitutional amendments and constitutional common law", Harvard University Working Paper, 2004.

This paper argues that although *Pepper v Hart* was an important step in legal procedure but that the judges in English courts have gone ahead to make their own extrapolations to this precedent and write in English court decisions, for posterity, inserting certain writers' names from certain journal articles, giving these authors unmitigated and positive publicity. This is an unfair manipulation of English law...

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