



The Legal Philosophy of H.L.A. Hart: A Critical Appraisal

Martin, Michael

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The Legal Philosophy Of Hl A Hart A Critical Appraisal

**Naomi Creutzfeldt, Marc Mason, Kirsten
McConnachie**

The Legal Philosophy Of Hl A Hart A Critical Appraisal:

The Legal Philosophy of H.L.A. Hart Michael Martin, 1987 *A Theory of Political Obligation* Margaret Gilbert, 2006-05-11 Margaret Gilbert offers an incisive new approach to a classic problem of political philosophy when and why should I do what the laws of my country tell me to do Beginning with carefully argued accounts of social groups in general and political societies in particular the author argues that in central standard senses of the relevant terms membership in a political society in and of itself obligates one to support that society's political institutions The obligations in question are not moral requirements derived from general moral principles as is often supposed but a matter of one's participation in a special kind of commitment joint commitment An agreement is sufficient but not necessary to generate such a commitment Gilbert uses the phrase plural subject to refer to all of those who are jointly committed in some way She therefore labels the theory offered in this book the plural subject theory of political obligation The author concentrates on the exposition of this theory carefully explaining how and in what sense joint commitments obligate She also explores a classic theory of political obligation actual contract theory according to which one is obligated to conform to the laws of one's country because one agreed to do so She offers a new interpretation of this theory in light of a theory of plural subject theory of agreements She argues that actual contract theory has more merit than has been thought though the more general plural subject theory is to be preferred She compares and contrasts plural subject theory with identification theory relationship theory and the theory of fair play She brings it to bear on some classic situations of crisis and in the concluding chapter suggests a number of avenues for related empirical and moral inquiry Clearly and compellingly written *A Theory of Political Obligation* will be essential reading for political philosophers and theorists **The Making of Constitutional Democracy** Paolo Sandro, 2022-01-27 This open access book addresses a palpable yet widely neglected tension in legal discourse In our everyday legal practices whether taking place in a courtroom classroom law firm or elsewhere we routinely and unproblematically talk of the activities of creating and applying the law However when legal scholars have analysed this distinction in their theories rather than simply assuming it many have undermined it if not dismissed it as untenable The book considers the relevance of distinguishing between law creation and law application and how this transcends the boundaries of jurisprudential enquiry It argues that such a distinction is also a crucial component of political theory For if there is no possibility of applying a legal rule that was created by a different institution at a previous moment in time then our current constitutional democratic frameworks are effectively empty vessels that conceal a power relationship between public authorities and citizens that is very different from the one on which constitutional democracy is grounded After problematising the most relevant objections in the literature the book presents a comprehensive defence of the distinction between creation and application of law within the structure of constitutional democracy It does so through an integrated jurisprudential methodology which combines insights from different disciplines including history anthropology political

science philosophy of language and philosophy of action while also casting new light on long standing issues in public law such as the role of legal discretion in the law making process and the scope of the separation of powers doctrine The ebook editions of this book are available open access under a CC BY NC ND 4 0 licence on bloomsburycollections com

A Treatise of Legal Philosophy and General Jurisprudence Gerald J. Postema, 2011-08-05 Volume 11 the sixth of the historical volumes of A Treatise of Legal Philosophy and General Jurisprudence offers a fresh philosophically engaged critical interpretation of the main currents of jurisprudential thought in the English speaking world of the 20th century It tells the tale of two lectures and their legacies Oliver Wendell Holmes Jr s The Path of Law 1897 and H L A Hart s Holmes Lecture Positivism and the Separation of Law and Morals 1958 Holmes s radical challenge to late 19th century legal science gave birth to a rich variety of competing approaches to understanding law and legal reasoning from realism to economic jurisprudence to legal pragmatism from recovery of key elements of common law jurisprudence and rule of law doctrine in the work of Llewellyn Fuller and Hayek to root and branch attacks on the ideology of law by the Critical Legal Studies and Feminist movements Hart simultaneously building upon and transforming the undations of Austinian analytic jurisprudence laid in the early 20th century introduced rigorous philosophical method to English speaking jurisprudence and offered a reinterpretation of legal positivism which set the agenda for analytic legal philosophy to the end of the century and beyond A wide ranging debate over the role of moral principles in legal reasoning sparked by Dworkin s fundamental challenge to Hart s theory generated competing interpretations of and fundamental challenges to core doctrines of Hart s positivism including the nature and role of conventions at the foundations of law and the methodology of philosophical jurisprudence

The Legal Philosophy and Influence of Jeremy Bentham Guillaume Tusseau, 2014-06-20 Gathering together an impressive array of legal scholars from around the world this book features essays on Jeremy Bentham s major legal theoretical treatise Of the Limits of the Penal Branch of Jurisprudence reassessing Bentham s theories of law as well as his impact on jurisprudence While offering a suggestive picture of contemporary Bentham studies the book provides a thorough examination of concepts such as legal discourse legal norms legal system and subjective legal positions The book compares Bentham s approach with other landmark theories and the works of major legal philosophers including Austin Hart and Kelsen and explores Bentham s treatise through major trends in contemporary legal thought such as the imperative theory of law deontic logic Scandinavian and American legal realisms the pure theory of law and critical legal thought Resisting any apologetic stance the book elucidates how consistent with Bentham s all encompassing project of utilitarian reform Limits turns out to be and how this sheds light on contemporary modes of governance The book will be great use and interest to scholars and students of contemporary jurisprudence legal theory 19th century philosophy and public law

Routledge Handbook of Socio-Legal Theory and Methods Naomi Creutzfeldt, Marc Mason, Kirsten McConnachie, 2019-08-13 Drawing on a range of approaches from the social sciences and humanities this handbook explores theoretical and empirical

perspectives that address the articulation of law in society and the social character of the rule of law The vast field of socio legal studies provides multiple lenses through which law can be considered Rather than seeking to define the field of socio legal studies this book takes up the experiences of researchers within the field First hand accounts of socio legal research projects allow the reader to engage with diverse theoretical and methodological approaches within this fluid interdisciplinary area The book provides a rich resource for those interested in deepening their understanding of the variety of theories and methods available when law is studied in its broadest social context as well as setting those within the history of the socio legal movement The chapters consider multiple disciplinary lenses including feminism anthropology and sociology as well as a variety of methodologies including narrative visual and spatial psychological economic and epidemiological approaches Moreover these are applied in a range of substantive contexts such as online hate speech environmental law biotechnology research in post conflict situations race and LGBT lawyers The handbook brings together younger contributors and some of the best known names in the socio legal field It offers a fresh perspective on the past present and future of sociolegal studies that will appeal to students and scholars with relevant interests in a range of subjects including law sociology and politics Chapter 7 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4.0 license

Minorities, Rights and the Law in Malaysia Thaatchaayini Kananatu, 2020-03-09 This book analyses the mobilisation of race rights and the law in Malaysia It examines the Indian community in Malaysia a quiet minority which consists of the former Indian Tamil plantation labour community and the urban Indian middle class The first part of the book explores the role played by British colonial laws and policies during the British colonial period in Malaya from the 1890s to 1956 in the construction of an Indian race in Malaya the racialization of labour laws and policies and labour based mobilisation culminated in the 1940s The second part investigates the mobilisation trends of the Indian community from 1957 at the onset of Independent Malaya to 2018 It shows a gradual shift in the Indian community from a quiet minority into a mass mobilising collective or social movement known as the Hindu Rights Action Force HINDRAF in 2007 The author shows that activist lawyers and Indian mobilisers played a crucial part in organizing a civil disobedience strategy of framing grievances as political rights and using the law as a site of contention in order to claim legal rights through strategic litigation Highly interdisciplinary in nature this book will be of interest to scholars and researchers examining the role of the law and rights in areas such as sociolegal studies law and society scholarship law and the postcolonial social movement studies migration and labour studies Asian law and Southeast Asian Studies

University of West Los Angeles Law Review, 1969 **Theory and Method in Socio-Legal Research** Reza Banakar, Max Travers, 2005-12-19 Socio legal researchers increasingly recognise the need to employ a wide variety of methods in studying law and legal phenomena and the need to be informed by an understanding of debates about theory and method in mainstream social science The papers in this volume illustrate how a range of topics including EU law ombudsmen

judges lawyers Shariah Councils and the quality assurance industry can be researched from a socio legal perspective The objective of the collection is to show how different methods can be used in researching law and legal phenomena how methodological issues and debates in sociology are relevant to the study of law and the importance of the debate between structural and action traditions in researching law It also approaches the methodological problem of how sociology of law can address the content of legal practice from a variety of perspectives and discusses the relationship between pure and applied research The editors provide a critical introduction to each of the six sections and a general introduction on law sociology and method The collection will provide an invaluable resource for socio legal researchers law school researchers and postgraduates

Legal Positivism, Politics, and Critical Ethics Elena Namli, 2025-07-10 This book challenges the view that legal positivism should be reduced to a conceptual analysis of legal validity Instead Elena Namli reclaims legal positivism as a theory of the relationship between law morality and politics Presenting novel interpretations of the classical works of Herbert L A Hart Joseph Raz and J rgen Habermas Namli frames legal positivism as a theory that makes possible a moral and political critique of valid law Moreover this book defends the dialectical relationship between law politics and morality by combining a positivist approach to legal validity with a constructivist ethical theory which strengthens the critical potential of legal positivism Legally valid norms may not always be morally justified but understanding the moral quality of legal regulations is essential for comprehending modern law

Victoria University of Wellington Law Review, 1998 *A London Bibliography of the Social Sciences*, 1931 Vols 1 4 include material to June 1 1929

Natural Law & the Secular Mythos Gregory Morgan, 2025-02-20 This book argues that natural law when construed as an epistemological and trans cultural lingua franca adjudged capable of legitimating the rational intelligibility and universal applicability of specific Christian moral principles within contemporary secular discourse has failed Through a detailed analysis of the contributions of three prominent natural law theorists who are located within a shared philosophical theological tradition namely John Finnis Jean Porter and John Milbank the text illuminates the extent to which this failure is as much intramural as it is extramural Morgan explores how new horizons open up for natural law if the theological unsaid s are allowed to surface and the disremembering power of the secular mythos is overcome The final chapter s of the book addresses one such horizon that the theoretical fulcrum of the natural law lies not in its perceptual self evidence or in its immanent secularity but rather in its subtle provision of an immanent eschatology

The Morality of Conflict Samantha Besson, 2005-11-25 This book explores the relationship between the law and pervasive and persistent reasonable disagreement about justice It reveals the central moral function and creative force of reasonable disagreement in and about the law and shows why and how lawyers and legal philosophers should take reasonable conflict more seriously Even though the law should be regarded as the primary mode of settlement of our moral conflicts it can and should also be the object and the forum of further moral conflicts There is more to the rule of law than convergence and determinacy and it is important therefore to question the importance of agreement in law and

politics By addressing in detail issues pertaining to the nature and sources of disagreement its extent and significance as well as the procedural institutional and substantive responses to disagreement in the law and their legitimacy this book suggests the value of a comprehensive approach to thinking about conflict which until recently has been analysed in a compartmentalized way It aims to provide a fully fledged political morality of conflict by drawing on the analysis of topical jurisprudential questions in the new light of disagreement Developing such a global theory of disagreement in the law should be read in the context of the broader effort of reconstructing a complete account of democratic law making in pluralistic societies The book will be of value not only to legal philosophers and constitutional theorists but also to political and democratic theorists as well as to all those interested in public decision making in conditions of conflict **University of**

Western Australia Law Review ,1991 A Critical Appraisal of Karl Olivecrona's Legal Philosophy Torben

Spaak,2014-07-03 This book offers a critical appraisal of Karl Olivecrona s legal philosophy Based on Olivecrona s critique of the view that law has binding force the analysis of the concept and function of a legal rule and the idea that law is a matter of organized force the book argues that Olivecrona s legal philosophy is a unique contribution to twentieth century legal philosophy It shows how Olivecrona s philosophy can be used in the assessment of contemporary theories of law such as those put forward by Hart Raz Dworkin and Alexy In addition the book argues that Olivecrona s various discussions of theories defended by key people in the history of legal and political philosophy are highly interesting contributions They not only increase our understanding of the legal and political philosophy of previous generations but also enhances our insight into legal philosophical questions that remain with us today *From Apology to Utopia* Martti Koskenniemi,2006-02-02 This

book presents a critical view of international law as an argumentative practice that aims to depoliticise international relations Drawing from a range of materials Koskenniemi demonstrates how international law becomes vulnerable to the contrasting criticisms of being either an irrelevant moralist Utopia or a manipulable façade for State interests He examines the conflicts inherent in international law sources sovereignty custom and world order and shows how legal discourse about such subjects can be described in terms of a small number of argumentative rules This book was originally published in English in Finland in 1989 and though it quickly became a classic it has been out of print for some years In 2006 Cambridge was proud to reissue this seminal text together with a freshly written Epilogue in which the author both responds to critiques of the original work and reflects on the effect and significance of his deconstructive approach today *Educating Oneself in*

Public Michael S. Moore,2000 The eleven essays in *Educating Oneself in Public* Critical Essays in Jurisprudence constitute an education in the Anglo American jurisprudence of the second half of the twentieth century The book examines both the thought of major figures such as H L A Hart Joseph Raz Ronald Dworkin Lon Fuller and Richard Rorty and the general themes of major movements such as legal realism post modernism and pragmatism Despite this focus on the thoughts of others the book is not a survey but is a critical probing of particular ideas often attributed to such figures Detailed depth of

understanding is sought about Hart's conception of a general jurisprudence that describes law in general Dworkin's conception of an internal jurisprudence that interprets the concept of law of our legal culture Fuller's ideal of a functional jurisprudence that seeks the essence of law in the values it serves the place of rules in legal and moral reasoning Raz's idea that laws give exclusionary reasons to legal actors subject to such laws how judges should reason according to the legal realists whether there are right answers to all disputed law cases whether behind the obvious law of legal rules there can exist an unobvious law of legal principles Finnis's conception of the common good as the function law uniquely serves in what sense law practice and legal theory are interpretive activities whether all knowledge or some discrete realm of knowledge is peculiarly interpretive in character Michael Moore's views on each of these topics are detailed and original even if the springboards for each discussion are the writings of those who introduced such topics into modern discussions The introductory chapter includes responses by many of the figures examined in the other essays together with the author's rejoinders

□□□□□□□□ □□,2008 *Political Theory* Simon Stevens,2025-02-07 Big ideas matter in politics and they spark fierce debates about the future of our society This pathbreaking new textbook examines the key political ideas that shape our lives today Political Theory Why Big Ideas Matter takes a unique disruptive approach by creating conversations between two or three important thinkers within multiple cultural contexts and perspectives to show innovative connections between thinkers across time and space Rather than drawing solely from the established canon of traditional political thought which has been criticised for being too white too male and too Western this book is part of a worldwide effort to contest and diversify Have big ideas on sovereignty been fundamental to establishing political order or a tool to justify colonisation Is John Locke's theory of property fit to answer questions about who owns our data or the matter of reparations Can the tradition of human rights incorporate non human species Is gender performative and how does this represent the struggles of LGBTQ communities Political theory can get us thinking more deeply about empirical events but empirical events can also get us critiquing theories for falling short This textbook is essential for undergraduate and postgraduate students of political theory and shows how we can be better political theorists Simon Stevens is Senior Lecturer in Political Philosophy at De Montfort University Leicester UK and is a winner of the Political Studies Association Bernard Crick Prize for Outstanding Teaching

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