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*The Legacy of H. L. A. Hart: Legal, Political, and Moral Philosophy.*

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H. L. A. Hart's (1907-1992) influence on contemporary philosophy is not restricted to the philosophy of law. As the book's sub-title suggests and the table of contents confirm, he wrote widely on matters social, political and moral, not just legal. Probably best known for *The Concept of Law* (1961), Hart also authored a collection of essays on Jeremy Bentham (*Essays on Bentham*, 1982), two books on the morality of criminal law based on his exchange with Lord Patrick Devlin (*Law, Liberty and Morality*, 1963) and *The Morality of the Criminal Law*, 1965), one on punishment (*Punishment and Responsibility*, 1968), a treatise as well as a collection of essays on jurisprudential theory (*Definition and Theory in Jurisprudence*, 1953, and *Essays in Jurisprudence and Philosophy*, 1983), and finally a volume on legal causation, co-authored with Tony Honoré (*Causation in the Law*, 1959). The book under review here, on Hart's legacy, is divided into six sections: the first is devoted to Hart's general jurisprudential theory; the second to his writings on criminal law; the third to legal causation; the fourth to concerns of justice; the fifth to legal, political and moral rights; and the sixth and final section to matters of toleration and liberalism.

Section 1: Hart on General Jurisprudential Theory. Among his many well-known former students, John Finnis is no stranger to Hart's nascent theory of legal positivism. Elements of Hart's positivism were inspired by the works of John Austin, Jeremy Bentham and even Ludwig Wittgenstein. Finnis leans in the opposite direction as Hart, though, towards the natural law tradition, with its roots in the works of Aristotle, Aquinas and Blackstone. What separates these two traditions in legal theory (positivism and naturalism) is where they come out on the question of whether law is separable from morals. For the positivists, it is (reflected in their separability thesis, i.e. law and morality are conceptually distinct); for the naturalists, it is not. What Finnis expresses most concern about in his essay, 'On Hart's Way: Law as Reason and as Fact', is whether Hart's theorizing of the internal (or first-person) perspective of agents in a legal system, as opposed to the external (or third-person) perspective of a sociologist studying those agents, accounts for practical reason-giving activity. He believes that it does not. Hart famously argued that law is the union of primary rules, which regulate conduct, and secondary rules, which create, alter and extinguish primary rules. However, the combination of primary and secondary rules is possible, on Finnis's reading, only if we consider what Hart failed to consider, namely, the normative character of social ends and, with them, the reasons for pursuing those ends: 'Such integration [of primary and

secondary rules] reinforces and makes more pointed the rational directiveness of the initial normativity entailed by the intelligible desirability of the basic human goods, that is, from their priority as reasons both for action and for abstention from what by entailment from them are basic forms of harm by conduct or neglect' (24). Despite insisting on the value of an internal or rule-follower's perspective, Hart was more concerned with the fact of law, particularly the chain-link process of official rule-making that validates standing legislation. So, Finnis concludes that Hart ignored the internal reasons for complying with a law and, specifically, how these same reasons imply positive appraisals of social goods.

Similar to Finnis' contribution, the four remaining essays demonstrate that the message and tone of the collection are decidedly more critical than a previous volume dedicated to Hart's work (*Law, Morality, and Society* [1977]). In the second essay, titled 'The Legal Entrenchment of Illegality', David Lyons argues that institutionalized illegality threatens to undermine Hart's legal theory. The third article, Gerald Postema's 'Conformity, Custom, and Congruence: Rethinking the Efficacy of Law', examines the positivist's conventionalist thesis that law is constituted by norms or conventions, and it concludes that Hart's version of it, which treats the 'practice of law-applying officials' as paradigmatic, is unable to capture the richness of common law jurisprudence, especially the embeddedness of legal norms in social conventions. In 'Hart and the Principles of Legality', Jeremy Waldron insists that there are several lacunae in Hart's jurisprudential theory, particularly his omission of any extended discussion of *stare decisis* (eventually remedied by his student Ronald Dworkin), his failure to treat international law as anything more than a 'primitive legal system', and his overall neglect of the concept of legality or rule of law (68). Wil Waluchow finishes the section with a paper titled 'Legality, Morality, and the Guiding Function of Law', in which he shows that Hart's version of the separability thesis is not a straight-forward endorsement of a strict distinction between law and morals. Consequently, considerations of 'political morality' will, even for Hart, creep back into the picture when assessing the validity of legal norms (89).

Section 2: Hart on Criminal Law and Punishment. The book's second section is devoted to Hart's writings on criminal law, punishment and responsibility. Antony Duff's essay, 'Responsibility and Liability in Criminal Law', explores two 'striking features' of Hart's book, *Punishment and Responsibility* (1968): 1) its ability to set the agenda for later philosophical debates about criminal liability, and 2) its omission of any discussion of the logic of the criminal trial process. In the second and final contribution to this section, John Gardner's 'Hart and Feinberg on Responsibility', Hart and Joel Feinberg's theories of responsibility are compared and contrasted, the extrapolated result of which is a distinction—'basic responsibility' (or 'ability to respond') and 'consequential responsibility' (accepting the 'adverse normative consequences' from one's blameworthy doings)—that clarifies the previously muddled terrain (123, 132).

Section 3: Hart and Honoré on Legal Causation. In this section, the moral

philosopher Judith Jarvis Thomson explains and rejects the claim in Hart and Honoré's *Causation in the Law* (1959) that to say that X caused Y more must be involved than that X was a 'causally relevant factor' or necessary condition (143). In 'The Nightmare and the Noble Dream: Hart and Honoré on Causation and Responsibility', Richard Wright follows Thomson's lead, but in a slightly less technical exposition and critique of the position that principles for attributing legal responsibility are themselves principles of natural causation. He claims that equivocating between the two kinds of principles 'has contributed to continued confusion about, rather than clarification of, the concept of causation and its relation to moral and legal responsibility' (166).

Section 4: Hart on Justice. Brad Hooker's essay 'Fairness, Needs, and Desert' opens the section of the book dedicated to Hart's views on justice. While the piece is only tangentially concerned with justice as Hart conceived it (most of the essay refutes arguments made by David Miller), it does address the paradox that laws which are procedurally fair (i.e. treating all equally) can nevertheless be substantively unjust. Authored by the well-known Princeton philosopher, Philip Pettit, the second and final contribution to this section, titled 'The Basic Liberties', builds on Hart's extensive critique of John Rawls's claim that instituting a system of basic liberties is the first requirement. Inspired by this critique, Pettit demonstrates that basic liberties do have a place within 'a republican conception of freedom and government' (202).

Section 5: Hart on Rights. Opening the penultimate section, Cecile Fabre contends that posthumous moral rights are impossible on an Interest Theory of rights (whereby the right-holder must be capable of making claims on those who are duty-bound), the result of which is to weaken arguments against Hart's Will Theory of rights (whereby the right-holder must be able to make demands on the duty-bound). In 'Are There Any Natural Rights?' Hillel Steiner examines Hart's essay, that he (Hart) later retracted (because 'its main argument seemed to be mistaken'), in order to shed light on the relationship between moral and natural rights (240). The section closes with Leif Wenar's paper extending Hart's claim, borrowed from Bentham, that it is best to take a linguistic approach to rights analysis, considering how people ordinarily use the term 'right' as a preparation for comprehending the concept itself.

Section 6: Hart on Toleration and Liberalism. Leslie Green begins the final section of the collection with a discussion of toleration and, specifically, how Hart's exchange with Lord Devlin imparts the lesson that we must understand as well as tolerate. In 'Private Faces in Public Places', Susan Mendus comments on the serious disagreement between biographers and philosophers over the relevance of Hart's personal life to his overall legacy, and then comes out on the side of biographers, who claim that it is relevant. Finally, Alan Ryan characterizes Hart's political worldview as a 'liberalism of fear' about the wisdom of both public and elite opinion mixed with a faith, shared with many of his colleagues at Oxford (particularly Isaiah Berlin and Stuart Hampshire), in 'value-pluralism' (315).

During Trinity term 1999, I spent the three months as a visiting student at Magdalen College, Oxford University, reading and writing essays on legal philosophy, including the works of Hart, among others. Almost a decade later, I must admit that the contributors to this volume provide valuable insight into the content of his enduring legacy for legal, political and moral philosophy. Moreover, these critical essays pave the way for future generations of students and scholars to rediscover the problems that Hart raised and to reevaluate the solutions he proposed.

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