



1999

Foreword: A Symposium on the Jurisprudence of H.L.A. Hart

George A. Martinez

Southern Methodist University, gmartine@mail.smu.edu

Follow this and additional works at: <https://scholar.smu.edu/smulr>



Part of the [Law Commons](#)

Recommended Citation

George A. Martinez, *Foreword: A Symposium on the Jurisprudence of H.L.A. Hart*, 52 SMU L. Rev. 25 (1999)

<https://scholar.smu.edu/smulr/vol52/iss1/11>

This Symposium is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

FOREWORD: A SYMPOSIUM ON THE JURISPRUDENCE OF H.L.A. HART

George A. Martínez*

H.L.A. Hart is widely regarded as the premier legal philosopher of this century. As this century draws to a close, it seems appropriate to reconsider Hart's work. Accordingly, in order to assess the continuing significance of Hart's philosophy, the *SMU Law Review* offers this symposium issue. Authored by a group of distinguished philosophers of law, the articles contained in this issue constitute important contributions to the field of jurisprudence. They conclusively demonstrate that Hart's legal philosophy continues to lie at the very center of contemporary legal theory.

In his contribution, *Law As Experience: Theory and the Internal Aspect of Law*,¹ Thomas Morawetz analyzes Hart's notion of "the internal aspect of rules."² In explicating Hart's distinction between the internal and external aspects of law, he reveals its importance for contemporary jurisprudence. In particular, he argues that there is a close connection between the external perspective of "jurisprudential theory and the internal aspect of legal practices."³ Thus, he rejects the views of legal theorists who fail to recognize the significance of the internal point of view.

In *Explicating the Internal Point of View*,⁴ Dennis Patterson observes that Hart's major work, *The Concept of Law*,⁵ was written during a period when philosophy had begun to focus on the analysis of language. That focus on language led Hart to ask "What, if anything, makes a proposition 'legal' and not a proposition of some other sort (e.g. moral)."⁶ He concludes that Hart was correct to analyze language in seeking "the uniqueness of law."⁷

In *Finding Wittgenstein at the Core of the Rule of Recognition*,⁸

* Associate Professor of Law, Southern Methodist University. B.A., Arizona State University; M.A. (Philosophy), The University of Michigan; J.D., Harvard Law School.

1. Thomas Morawetz, *Law As Experience: Theory and the Internal Aspect of Law*, 52 SMU L. REV. 27 (1999).

2. *Id.* at 28 (citing H.L.A. HART, *THE CONCEPT OF LAW* 86-88 (2d ed. 1964)).

3. Morawetz, *supra* note 1, at 52.

4. Dennis Patterson, *Explicating the Internal Point of View*, 52 SMU L. REV. 69 (1999).

5. HART, *supra* note 2.

6. Patterson, *supra* note 4, at 74.

7. *Id.* at 76.

8. Anthony Sebok, *Finding Wittgenstein at the Core of the Rule of Recognition*, 52 SMU L. REV. 77 (1999).

Anthony Sebok explores how Hart's theory of judicial discretion is related to his positivistic conception of law. He argues that Hart's notion of discretion makes sense only in the context of Hart's distinction between primary and secondary rules. In particular, he contends that the secondary rules operate to constrain the exercise of judicial discretion.

The next article is *Hart, Fuller, Dworkin, and Fragile Norms*⁹ by Joseph Mendola. In this piece, Mendola revisits Hart's famous debate with Lon Fuller regarding the relationship between law and morality. He concludes that Fuller's position is stronger than many have thought.

In *Logic, Intuition, and the Positivist Legacy of H.L.A. Hart*,¹⁰ Douglas Lind considers Hart's contributions to the question of whether judicial decision making is based on reason or intuition. In this regard, he points out that Hart viewed logic as a fundamental aspect of adjudication.

In *H.L.A. Hart and the Hermeneutic Turn in Legal Theory*,¹¹ Brian Bix explains the genesis of Hart's notion of the internal perspective on law. Bix also considers how subsequent legal philosophers have critiqued and refined Hart's internalist position.

Finally, in *Legality and Morality in H.L.A. Hart's Theory of Criminal Law*,¹² Hamish Stewart turns his attention to Hart's work in the area of criminal law. He argues that Hart's analysis of the criminal law undermines Hart's jurisprudential claim that there is a separation between law and morality.

Professor Morawetz is surely correct when he observes that Hart "is no longer our contemporary."¹³ The articles in this symposium issue, however, clearly show that Hart's jurisprudential insights are of continuing significance.

9. Joseph Mendola, *Hart, Fuller, Dworkin, and Fragile Norms*, 52 SMU L. REV. 113 (1999).

10. Douglas Lind, *Logic, Intuition and the Positivist Legacy of H.L.A. Hart*, 52 SMU L. REV. 139 (1999).

11. Brian Bix, *H.L.A. Hart and the Hermeneutic Turn in Legal Theory*, 52 SMU L. REV. 171 (1999).

12. Hamish Stewart, *Legal Morality in H.L.A. Hart's Theory of Criminal Law*, 52 SMU L. REV. 205 (1999).

13. Morawetz, *supra* note 1, at 28.