

7. The Character of Legal Theory

Essential

- Dworkin, *LE* 31-48; 114-117 · Dworkin, 'Legal Theory and the Problem of Sense', in Gavison (ed.), *Issues in Contemporary Legal Philosophy*, 9-20.
- Hart, *CL*, Preface; 1-6; 13-17; 239-44.
- Finnis, *Natural Law and Natural Rights*, Ch. 1.
- Dworkin, 'Hart's Postscript and the Character of Political Philosophy', unpublished manuscript ,
<http://www.law.nyu.edu/clppt/program2001/readings/readingshart/rdhartcolloquium2.pdf>
- Raz, 'Two Views of the Nature of Law' in Coleman (ed.), *Hart's Postscript*, 1-37.

Further

- Dworkin, 'Hart's Posthumous Reply', unpublished manuscript (DESK), 2-19
- Stavropoulos, 'Hart's Semantics', in J. Coleman (ed.), *Hart's Postscript*, 59-88
- Dworkin, 'Objectivity and Truth: You'd Better Believe It', *Philosophy and Public Affairs* 25 (1996); also online at
<http://www.nyu.edu/gsas/dept/philo/faculty/dworkin/papers/objectivity.html>

Essay

Can legal theory be descriptive?

Questions

Is Hart describing how expressions such as 'obligation', 'law', or 'legal duty' are used?

What is wrong with definitions of terms such as 'law', according to Hart? How does Hart's own method differ from an attempt to define such terms?

What is a descriptive theory of law describing? What makes its claims true?

Can we explain the nature of law by elucidating the concept of law?

Can legal theory be descriptive, consistent with the law being a matter of justification of past political practices? Can legal theory be normative, consistent with the law being a matter of historical facts alone?

Is it true that when we disagree about what counts as e.g. democratic, we hold ourselves

responsible to a standard of correct use that is defined by the criteria for the application of the concept that are actually used by our community?