

Contents

Part I

1	Introduction	3
2	Legal Positivism and Real Entities	5
2.1	Introduction	5
2.2	The Expositor and the Censor	6
2.3	Facts Underlying Prescription	6
2.4	Law Treated as a Real Entity	7
2.4.1	Introduction	7
2.4.2	Bentham	7
2.4.3	Austin	8
2.4.4	Summary	9
2.5	Description of the Real Entity	9
2.6	Problems	10
2.7	Utilitarianism	11
2.8	Conclusion	13
3	H.L.A. Hart and the Framework of Legal Thought	15
3.1	Introduction	15
3.2	Hart's Description	16
3.2.1	Primary Rules	16
3.2.2	The Rule of Recognition	16
3.2.3	Secondary Rules and the Circular System of Recognition	17
3.2.4	The Framework of Legal Thought	17
3.2.5	Validity and Existence	18
3.2.6	Validity Distributed in a System Taken to Be Valid	18
3.2.7	Soft Legal Positivism	19
3.3	Critical Observations regarding Hart's Descriptive Project	19
3.3.1	Validity of What?	19
3.3.2	Accessibility of the Rule of Recognition	20

3.3.3	Preconditions for Description	20
3.3.4	One of Many Versions	21
3.3.5	Does Hart's Description Provide Certainty and Predictability?	22
3.4	Justification and Obligation	23
3.4.1	Introduction.	23
3.4.2	Hart and the Gunman in Earlier Legal Positivism	23
3.4.3	The Gunman in Hart's Theory	24
4	Joseph Raz – the Social Thesis and the Sources Thesis	27
4.1	Description	27
4.1.1	Introduction.	27
4.1.2	Versions of the Social Thesis	27
4.1.3	The Conditions of the Social Thesis	28
4.1.4	The Sources Thesis and its Support	29
4.1.5	The Law and Legal Decisions.	30
4.1.6	Hard Positivism.	31
4.2	Objections	31
5	Ronald Dworkin and Restricted Legal Interpretation	33
5.1	Introduction.	33
5.2	Outline of Dworkin's Theory	34
5.2.1	The Propositional Aspect	34
5.2.2	Law as Integrity	34
5.3	Principles and Theoretical Disagreement.	35
5.4	The Separation of Principle and Policy	36
5.4.1	Perverse Policies.	36
5.4.2	Limited Discretion	38
5.5	Dworkin's Treatment of His Adversaries	38
5.5.1	Three Questions	38
5.5.2	Dworkin's Argument Against Legal Pragmatism.	39
5.5.3	Kinds of Consensus.	40
5.6	Evaluation of Dworkin's Argumentation	40
5.6.1	Between Convention and Pragmatism	40
5.6.2	Consensus of Independent Conviction	41
5.6.3	Dworkin's Modest Use of Objective.	42
5.6.4	Dworkin's Strange Picture of the Sceptic.	43
5.6.5	Justification of What?	43
5.7	Conclusion	44

Part II

6	Common Approaches in Reasoning	49
7	The Modernist Approach	51
7.1	Distinguishing Traits	51
7.2	The Distinguishing Ideas and Classical Philosophy	52
7.2.1	Introduction	52
7.2.2	Metaphysics	52
7.2.3	Descartes	53
7.2.4	Truth in Sentences	54
7.3	Ideals for Description	55
7.4	Realism and Anti-Realism	55
8	Scepticism, Relativism, Perspectivism	57
8.1	A Postmodernist Alternative to the Modernist Approach?	57
8.2	Historical Vestiges of the Approach	57
8.2.1	Introduction	57
8.2.2	Protagoras	58
8.2.3	Socrates and Plato	59
8.2.4	Nietzsche	60
8.3	Meaning and Truth	62
8.3.1	Recurrent Objections to Criticism of Truth-Objectivism	62
8.3.2	Dennis Patterson's Objection to Subjectivism	66
8.3.3	Coherence, the Sum of Conceptions and the Particularity of Linguistic Formulations	67
8.3.4	Language and Truth	68
8.3.5	Truth as Correspondence	69
8.3.6	The Truth about Truth	70
8.3.7	Simplicity of Description	73
8.3.8	The Anti-Formalism of Stanley Fish	74
8.3.9	Postmodernist Truth	76
9	Descriptive Theory of Law	79
9.1	The Descriptive Ambition	79
9.2	The Object Described by Descriptive Theory of Law	80
9.2.1	Adjudication	80
9.2.2	Legal Dogmatism	80
9.2.3	Form Instead of Content and the Idea of Law	81
9.2.4	The Allergy Simile	81
9.2.5	Summary	82
9.3	Arguments for Description	83
9.3.1	Introduction	83
9.3.2	What Law Really is	83

9.3.3	Description Concerning Language Use	83
9.3.4	The Purpose of Law and Description	84
9.4	Value Judgements	85
9.5	Conclusion	86
10	Interpretation	87
10.1	Introduction	87
10.2	Stanley Fish	88
10.2.1	Anti-Formalism in Law	88
10.2.2	Rules and Actions in a Circular Relation	88
10.2.3	Restrictions on the Discretion of the Judge	89
10.2.4	Problems Concerning Fish's View of Interpretive Communities	90
10.2.5	Fish's Criticism of Theory	91
11	The Quest for the Description of the Law	93
11.1	Consensus about Law	93
11.1.1	Legal Gauges and Limited Consensus	93
11.1.2	Adjudication and Justice	94
11.2	The Goal-Theory of Law	94
11.3	Is and Ought	95
11.4	Why Question the Quest?	96
 Appendix		
	The Originality and Power of the Throwing Thrown	101
	Compilation of Law Cases	106
	Bibliography	107
	Index	111