

Pure Theory of Law

5 pages | 1176 words

Introduction

The place of force ('coercion') in the pure theory has evoked adverse comment. There is no explicit assertion in the theory that law is only force, but there is an inference that the effectiveness of law seems to be based solely on force or sanction. All law must possess 'an apparatus of compulsion', Kelsen argues, and the essence of law is in duty, not in right. One's legal duty is as the law commands, with coercion available for the enforcement of norms. But critics have suggested that this is a confusion of 'coercion' and 'obligation'. It is because a rule is considered by the community as obligatory that it is possible to attach to it some measure of coercion; the rule is not obligatory merely because there is coercion. The rules relating to individual physical inviolability are considered by most communities to be of an obligatory nature and therefore penalties are attached to their breach; the rules embodied in the OAPA 1861, are not considered as obligatory merely because of the sanctions contained therein.

The discussions on communal attitudes

Further, Kelsen is said to have ignored the discussions on communal attitudes to obligation, punishments, etc, which form the content of important work in the social sciences. Kelsen's norms seem to be little more than formal, authoritarian commands enforced by those who happen to have a monopoly of force within the community. This has been criticised as a caricature of real life: laws are not obeyed merely because of threatened sanctions; some statutes impose duties without the threat of any sanction. Duties and sanctions require separate definitions because, in reality, they are not coterminous. The concept of the Grundnorm (the 'basic norm'), which is central to the 'pure theory', is not without its critics. The basic norm ('presupposed in juristic thinking') is that which is said to give a unity to the legal system in that it tops the pyramid of norms and gives those norms their validity. This has been condemned as mere fiction, or as being little more than Austin's 'sovereign' in disguise, or as a mythical 'first cause' beyond which one ought not to venture in any investigation of law. A statement such as 'the first constitution must be obeyed' is criticised as self-contradictory. The reasons why the law is obeyed, argue the critics, are to be found in more than one so-called 'fundamental reason' and certainly not in any fictitious basic norm, the very existence of which rarely figures in the conscious responses of citizens to their legal obligations.

The many 'non-rule standards'

Further, if one considers the activities of the community's judges, the Grundnorm will not explain the many 'non-rule standards' which jurists such as Dworkin perceive as entering into decisions of the courts. Judges probably take into account, during the process of adjudication, much more than formal rules: they keep in mind wide principles and communal policies-the very matters which Kelsen seeks to exclude from a formulation of the essence of law. The very search for a Grundnorm within a legal system will be affected by the personal value-judgements of the investigator---so runs...

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The Law Students' Journal John Indermaur, Charles Thwaites, 1887 **Kritika: Essays on Intellectual Property** Ghidini, Gustavo, Ullrich, Hanns, Drahoš, Peter, 2021-11-17 The fields of intellectual property have broadened and deepened in so many ways that commentators struggle to keep up with the ceaseless rush of developments and hot topics **Kritika Essays on Intellectual Property** is a series that is designed to help authors escape this rush It creates a forum for authors who wish to more deeply question investigate and reflect upon the evolving themes and principles of the discipline **Hans Kelsen's Pure Theory of Law** Lars Vinx, 2007-09-06 Hans Kelsen is commonly considered to be among the founding fathers of modern legal philosophy Despite Kelsen's prominence as a legal theorist his political theory has so far been mostly overlooked This book argues that Kelsen's legal theory the Pure Theory of Law needs to be read in the context of Kelsen's political theory It offers the first comprehensive interpretation of the Pure Theory that makes systematic use of Kelsen's conception of the rule of law of his theory of democracy his defense of constitutional review and his views on international law Once it is read in the context of Kelsen's political works Kelsen's analysis of legal normativity provides us with a notion of political legitimacy that is distinct from any comprehensive and contestable theory of justice It shows how members of pluralist societies can reasonably acknowledge the binding nature of law even where its content does not fully accord with their own substantive views of the requirements of justice provided it is created in accordance with an ideal of fair arbitration amongst social groups This result leads to a fundamental re-evaluation of the Pure Theory of Law The theory is best understood as an attempt to find a middle ground between natural law and legal positivism Later positivist legal theorists inspired by Kelsen's work failed to appreciate the political theoretical context of the Pure Theory and turned to a narrow instrumentalism about the functions of law The perspective on Kelsen offered in this book aims to reconnect positivist legal thought with normative political theory *Judicial Review in European Union Law: Essays in Honour of Lord Slynn* Gordon Slynn Baron Slynn of Hadley, 2000-06-14 **Paradigm in Judicial Review** **Silk Essays** Silk Association of America, 1915 **Cambridge Legal Essays** Sir Percy Henry Winfield, Arnold Duncan McNair Baron McNair, 1926 Legal Essays in Tribute to Orrin Kip McMurray Max Radin, A. M. Kidd, 1935 **Selected Legal Essays on Price Control** United States. Office of Price Stabilization, 1951 ABA Journal, 1970-10 The ABA Journal serves the legal profession Qualified recipients are lawyers and judges law students law librarians and associate members of the American Bar Association **Legal Essays** Max Radin, A.M. Kidd, 2023-11-15 This title is part of UC Press's Voices Revived program which commemorates University of California Press's mission to seek out and cultivate the brightest minds and give them voice reach and impact Drawing on a backlist dating to 1893 Voices Revived makes high quality peer reviewed scholarship accessible once again using print on demand technology This title was originally published in 1935 **ABA Journal**, 1966-07 The ABA Journal serves the legal profession Qualified recipients are lawyers and judges law students law librarians and associate members of the American

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Journal of the Institute of Bankers Institute of Bankers (Great Britain), 1928 **The Oxford Handbook of Comparative Law** Mathias Reimann, Reinhard Zimmermann, 2019-03-26 This fully revised and updated second edition of The Oxford Handbook of Comparative Law provides a wide ranging and diverse critical survey of comparative law at the beginning of the twenty first century It summarizes and evaluates a discipline that is time honoured but not easily understood in all its dimensions In the current era of globalization this discipline is more relevant than ever both on the academic and on the practical level The Handbook is divided into three main sections Section I surveys how comparative law has developed and where it stands today in various parts of the world This includes not only traditional model jurisdictions such as France Germany and the United States but also other regions like Eastern Europe East Asia and Latin America Section II then discusses the major approaches to comparative law its methods goals and its relationship with other fields such as legal history economics and linguistics Finally section III deals with the status of comparative studies in over a dozen subject matter areas including the major categories of private economic public and criminal law The Handbook contains forty eight chapters written by experts from around the world The aim of each chapter is to provide an accessible original and critical account of the current state of comparative law in its respective area which will help to shape the agenda in the years to come Each chapter also includes a short bibliography referencing the definitive works in the field The Law Times ,1894 **Luigi Einaudi: Selected Economic Essays** L. Einaudi, R. Faucci, R. Marchionatti, 2014-02-19 Luigi Einaudi 1874 1961 was a leading liberal Italian economist economic historian and political figure Governor of the Bank of Italy Minister for the Budget and President of the Italian Republic He was a prolific writer in all fields and his writings testify to his outstanding contribution to economics during his long career **The Caian** ,1920 *The Accountant* ,1902

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