

# 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...

# Pure Law Essay Competition

**Mahmood Bagheri**



## Pure Law Essay Competition:

The Law Students' Journal John Indermaur, Charles Thwaites, 1887      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.

Kritika: Essays on Intellectual Property Ghidini, Gustavo, Ullrich, Hanns, Drahos, 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.      *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*      *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      **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     Silk Essays Silk Association of America,1915     *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     **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     **Selected Legal Essays on Price Control** United States. Office of Price Stabilization,1951     American Constitutional Law Donald P. Kommers,John E. Finn,Gary J. Jacobsohn,2004 Designed for an undergraduate course in US constitutional law the casebook takes a liberal arts approach tracing constitutional doctrine and policy back to their foundation in social moral and political theory and prompting students to engage the great questions of political life addressed by the Constitution and its interpretation Opinions of the US Supreme Court constitute the core of the documents The first edition was published in 1998 the second adds and updates topics Annotation 2004 Book News Inc Portland OR booknews com     *Published Essays, 1929-1933* Eric Voegelin,2003     *Journal of the Institute of Bankers* Institute of Bankers (Great Britain),1928     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 Bar Association     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     *The Law Times* ,1894     The Caian ,1920     **The Accountant** ,1902     *International Contracts and National Economic Regulation:Dispute Resolution Through International Commercial Arbitration* Mahmood Bagheri,2000-12-06 The growth of national economic regulation and the process of globalisation increasingly expose international transactions to an array of regulations from different jurisdictions These developments often contribute to widespread international contractual failures when parties claim the incompatibility of their contractual obligations with regulatory laws The author challenges conventional means of dispute resolution and argues for an interdisciplinary approach whereby disciplines such as international economic law conflict of laws contract law and economic regulations are functionally united to resolve

international and multifaceted regulatory disputes He identifies the normative foundation of contract law as an important determinant in this process contending that contract law is essentially neutral and underpinned by the concept of corrective justice while economic regulations are mainly prompted by distributive justice Applying this corrective distributive justice dichotomy to international contracts the author critically assesses major conflict of laws approaches such as proper law the Rome Convention and governmental interest analysis which could disregard either public interest or private rights The author taking these theories into account proposes an alternative two dimensional interest analysis approach He tests the viability of this approach with reference to arbitral awards and court decisions in various jurisdictions and concludes that it uniquely fits into the structure of international commercial arbitration In adopting this approach arbitrators would take into account both corrective and distributive justice and to the extent that corrective justice prevails would be able to avert a total failure of the contract

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web oct 18 2022 most of my favorite bars are 70 cacao the cacao mass and cocoa butter make up 70 of the bar but i find that 60 to 80 is my sweet spot i may like

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web 7 hours ago apr 28 2021 chocolate is a beloved treat but sometimes the cocoa beans that go into bars and other sweets have unpleasant flavors or scents making the

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web simply put it s when cacao beans are turned into a chocolate product in house with no step outsourced a bean to bar company produces chocolate by processing cacao beans