

Contents

Introduction	xiii
Mathieu CARPENTIER	
Part 1. Methods of Legal Theory	1
Chapter 1. Methodology in Legal Philosophy	3
Julie DICKSON	
1.1. Introduction: methodology in legal philosophy	3
1.2. The nature of law?	5
1.3. Changing questions: diversity and development	13
1.4. Directly evaluative legal philosophy versus indirectly evaluative legal philosophy	19
1.5. Conclusion	28
Chapter 2. The Methodology of Analytic Jurisprudence	31
Pierluigi CHIASSONI	
2.1. Foreword	31
2.2. The principles of an analytic approach to jurisprudence	32
2.3. The statute of analytic jurisprudence	38
2.4. Two sets of analytic tools	41
2.4.1. Tools for the analysis of legal discourses	42

2.4.2. Tools for the refinement of extant juridical terminological and conceptual apparatuses	48
2.4.3. The tools of analytic jurisprudence and conceptual analysis.	52
2.5. Vindicating a modest and reconstructive variety of conceptual analysis	53
2.6. Vindicating the analytic approach (and the principle of simplicity) against “essentialist” jurisprudence	58
2.7. References	68
Chapter 3. Methodology for Theorizing About the Nature of Law and About Doctrinal Areas of Law	75
Brian H. BIX	
3.1. Introduction.	75
3.2. Theories of the nature of law	75
3.2.1. Increasing philosophical sophistication	76
3.2.2. Hans Kelsen	77
3.2.3. H.L.A. Hart	78
3.2.4. Ronald Dworkin.	79
3.2.5. Joseph Raz	80
3.2.6. John Finnis	81
3.2.7. Frederick Schauer.	81
3.2.8. Brian Leiter	82
3.2.9. Mark Greenberg	83
3.3. Theories of doctrinal areas.	83
3.3.1. Descriptive, prescriptive and neutral.	84
3.3.2. Purposes	85
3.3.3. Universal versus parochial.	85
3.3.4. The subject of explanation (the data)	86
3.3.5. Justice and autonomy or efficiency	86
3.4. Conclusion	87
3.5. References	87
Chapter 4. Empirical Complexity as a Conceptual Claim: Reappraising Hart’s Account of Law as a Complex Social Practice	93
Gregory BLIGH	
4.1. Introduction.	93
4.1.1. No place for empirical science in Hartian jurisprudence	94

4.1.2. Hart’s object: “characterizing” the “complexity” of the legal system	96
4.1.3. Two key sources of influence: J.L. Austin and P.F. Strawson . . .	99
4.1.4. Do the (linguistic) twist	101
4.2. Hart’s Austinian account of the quotidian empirical statement	106
4.2.1. A critique of reductive sense-data empiricism	106
4.2.2. Accounting for the complexity of experience	112
4.3. Rejecting the descriptive fallacy	115
4.3.1. A critique of Russell’s theory of meaning	116
4.3.2. A rejection of the descriptive fallacy carried over into Hart’s jurisprudence	122
4.4. The empirical relevance of the conceptual scheme in <i>The Concept of Law</i>	126
4.4.1. “Descriptive metaphysics” and “linguistic phenomenology” . . .	127
4.4.2. Empirical complexity and presupposition in <i>The Concept of Law</i>	135
4.5. Conclusion	140
4.6. References	142

Chapter 5. Authoritative Disagreement: Meta-Legal Theory and the Semantics of Adjudication 149

Andrej KRISTAN and Giulia PRAVATO

5.1. Introduction.	149
5.2. Explananda	150
5.2.1. Authoritative disagreement in fact-oriented interpretation	150
5.2.2. Authoritative disagreement in text-oriented interpretation	151
5.3. Meta-theoretic demarcation	154
5.3.1. Rule-skeptical legal positivism	155
5.3.2. Conventionalist legal positivism	155
5.3.3. Interpretivist legal antipositivism.	156
5.4. Semantic explanations	157
5.4.1. Semantic invariantism	158
5.4.2. Expressivism.	159
5.4.3. Indexical contextualism	161
5.4.4. Non-indexical contextualism	164
5.4.5. Dialetheism	164
5.4.6. Content relativism	165
5.4.7. Assessment relativism	166
5.4.8. Truth-value indeterminism	168

5.5. Conclusion	169
5.6. References	170
Chapter 6. Jeremy Waldron, the Legitimacy of Judicial Review and <i>Political</i> Political Theory	179
Charles-Maxime PANACCIO	
6.1. Introduction.	179
6.2. The first Waldron	180
6.2.1. The circumstances of politics	180
6.2.2. <i>Political</i> political theory	181
6.2.3. Rights	182
6.2.4. CRJR	182
6.3. Reviews of the first Waldron	184
6.3.1. The nature of disagreement	184
6.3.2. Substance and results versus process and procedure	185
6.3.3. CRJR	187
6.4. The second Waldron	187
6.5. Conclusion	191
6.6. References	192
Part 2. Metatheory of Legal Science	195
Chapter 7. Metatheory of an (Empirical) Legal Science	197
Eric MILLARD	
7.1. General framework: theory, metatheory and metascience	197
7.1.1. Theory and metatheory.	197
7.1.2. A theory of legal science as a metascience	200
7.1.3. A theory of (empirical) legal science	201
7.1.4. A theory of (empirical legal) science as applied metatheory.	205
7.2. (Meta)theoretical theses of an (empirical) legal science.	206
7.2.1. Epistemological thesis	208
7.2.2. Meta-ethical thesis	209
7.2.3. Methodological thesis	212
Chapter 8. Legal and Social Sciences: What are the Links?	215
Véronique CHAMPEIL-DESPLATS	
8.1. Social sciences, a factor in redefining legal sciences	218

8.1.1. Epistemological movements: the positioning of legal sciences between exact, physical and natural sciences and social sciences	218
8.1.2. Heuristic movements: the reinvigoration of legal sciences by the social sciences	221
8.2. The modalities of disciplinary articulations	225
8.2.1. Difficulties and pitfalls.	225
8.2.2. Interdisciplinary experiences and the pragmatism of interweaving knowledge.	228
8.3. References	231
Chapter 9. A Hermeneutic Reading of Law and Legal Theory: Regarding Paul Ricœur	235
Xavier BIOY and Thomas ESCACH-DUBOURG	
9.1. The outcome of a long journey, from the interpretive method to a general epistemology	237
9.1.1. A philosophy of interpretation	237
9.1.2. A hermeneutic of symbols as a propaedeutic of a grand philosophy: the symbol suggests.	243
9.2. Hermeneutic and textual disciplines	247
9.2.1. The conceptual break brought about by textual hermeneutics: the paradigm of textuality	248
9.2.2. The methodological break brought about by textual hermeneutics: reading and textual interpretation	253
9.3. Law as a hermeneutical discipline	257
9.3.1. Interpretation of the law: quoting the law and understanding it are one and the same thing	257
9.3.2. Interpretation by law and interpretation in law.	260
Chapter 10. Legal Science According to the Pure Theory of Law . .	265
Thomas HOCHMANN	
10.1. The negation of legal science (Sander)	267
10.2. The defense of legal science (Merkl)	270
10.3. Legal science pushed into the background (Kelsen)	276
10.3.1. Absence of denial of legal science	277
10.3.2. A theory of law, not of legal science	278
10.3.3. An interest in decision, not knowledge	279
10.3.4. A regression: the theory of the tacit alternative clause	281

Chapter 11. Axiological Neutrality, Oppositional Thinking and Knowledge	285
Jean-Baptiste POINTEL	
11.1. The three aspects of a theory	285
11.1.1. Pascal’s wager, a textbook case	286
11.1.2. A scientific theory of law	288
11.1.3. A factual analysis of “ought to be”	289
11.2. “Hume’s Guillotine”, a false foundation for axiological neutrality	290
11.2.1. The definition of “Hume’s Guillotine”, an error of interpretation	290
11.2.2. The meaning of “Hume’s Guillotine”, explaining its motivations	291
11.2.3. The consequence of “Hume’s Guillotine”, a return to argument	292
11.2.4. Purity or axiological neutrality, a return to Max Weber	293
11.2.5. Language acts in John L. Austin, the inevitable fusion between descriptive and prescriptive	294
11.2.6. Platonic reductionism, a problematological repression	295
11.2.7. The importance of the implicit, a more scientific approach	296
11.3. Oppositional commitment to the theory	298
11.3.1. The critical eye, connecting analysis to policy	298
11.3.2. Scientific purity, a political program	299
11.3.3. Methodological anarchism, a basis for research	300
11.3.4. The archaeology of knowledge, a critical method	302
11.3.5. Example: the concept of state tyranny	303
11.3.6. Oppositional knowledge in law, a program to be defined	304
11.4. A new disciplinary ethics, but for which academic field?	305
11.5. References	306
Chapter 12. Legal Science and Its Roles in Legal Reasoning	311
Fábio Perin SHECAIRA	
12.1. The concept of a source of law	311
12.1.1. Explicit reference in legal practice	312
12.1.2. Prescriptions that serve as content-independent reasons	313
12.2. Arguments from authority	314
12.3. Types of scholarly authority	316
12.3.1. Describing and prescribing	316
12.3.2. Can legal science really serve as practical authority?	319
12.3.3. A note on legitimate and de facto authority	323

12.4. Implications for jurisprudence	324
12.5. Conclusion	327
12.6. References.	327
Chapter 13. Inference to the Best Explanation in Legal Science; on Balancing Contrastive Hypotheses	329
David DUARTE	
13.1. Normative propositions in legal science	329
13.2. Inference to the best explanation	337
13.3. Speculative (hypothetical) normative propositions and inference to the best explanation	343
13.4. Contrastive hypotheses in balancing	346
13.5. References.	353
List of Authors	359
Index	361