

Book Reviews

Philosophy of Law: A Very Short Introduction by Raymond Wacks

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This book reviewed by the authors has details outlined as follows:

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The philosophy has been commonly introduced as the roots of knowledge that are also adopted in legal studies. Legal philosophy is fundamental and notably the most abstract idea that constructs the legal way of thinking.¹ This book entitled 'Philosophy of Law: A Very Short Introduction' aims to put this critical topic of legal philosophy within a lively and simplified but subtle explanation. The paragraph within the book elucidates the basic ideas of law using the theory as espoused by many legal philosophers, especially from the European legal tradition. It suggests readers consider legal philosophy as the essential element regardless of the hefty characteristics and weighty philosophical legal literature. The main issue arises two main streams of legal intuitions, *inter alia* law as a tool or device designed for social changes and the doubt surrounding this idea in socio-political, moral, and economic interpretations. These concepts are explained in the light of natural law, legal positivism, interpretative law, rights and justice, society and law, and critical legal theory.

Raymond Wacks presents law's situations and fundamental roles in a society constructed from the legal thoughts of conceptual and definitional problems interpreted as legal philosophy. As the introductory section, the introduction mainly covers how legal philosophy influences society through the coherent concept of living rules and legal doctrines,² to guide readers to understand the importance of legal philosophy. The guidance indicates a focused analysis of the philosophical grounds of law through descriptive and normative legal theories, which does not have a clear-cut distinction.

The first section of the book takes on the role of natural law in shaping legal philosophy grounds. The description goes into Aristotle's thoughts about how nature invented the law through the natural process of morality. It deals with its interpretations using other theories coined by Finnis, Cicero, Aquinas, Groot, Blackstones, Hobbes, Locke, Rousseau, Hume, and Fuller. The interpretation from these legal scholars is mainly swirled

¹ Henry Aspan & Muhammad Ali Adnan, "Several Perspectives on the Relationships Between Philosophy, Philosophy of Science, and Law" (2021) 7:8 EPRA Int J Multidiscip Res IJMR 363–367 at 365.

² Sanne Taekama & Wibren van der Burg, "Legal Philosophy as an Enrichment of Doctrinal Research Part I: Introducing Three Philosophical Methods" (2020) 1:1 Law Method 1–19 at 4.

around how the morality of human beings shaped the set of rules. This morality comes from the thoughts of churches believers such as Aquinas, which interprets that God created these rules as sacred.

In the second section of this book, legal positivism is interpreted as objectivity in law. Morality in legal positivism is regarded as that changes not from nature yet from humanity.³ Legal positivism arises as to the reaction of natural law supremacy on the standard law system. Furthermore, Jeremy Bentham and John Austin's criticism leads to the revolution of law through the codification and interpretations of commands and legislative roles in shaping legislature for the utmost utility of society. Also, Hart's positivism raises the importance of linguistic application for philosophical studies. This linguistic study leads to the development of the usage of legal terminology as the concept of law.

On the other hand, the officials have to accept the legal change and practice adjudication. This thought was provided by Hart and followed by Hans Kelsen towards the invention of legal norms as the basics elements of jurisprudence and legal transaction. These norms may intertwine and legalize the rule of law from general to more specific norms. The concepts of general norms are indicated as the primary source of the *grundnorm* theory of Kelsen. Legal positivism goes further to Joseph Raz's law as a social fact, which subdues morality as less important than the fact itself. The description through legal positivism in this book used the same former structure. Using similar methods repeatedly, Wacks forces readers to read each sub-section of every legal scholar's thoughts to find each topic's philosophical grounds.

Stepping on the third section of law as interpretations, the sole focus of this section will be on how the role of judges affects the non-codification situations through the adjudication process.⁴ Unlike the other section, Wacks explains that this third section may only use the Ronald Dworkin

³ David Plunkett, "Robust Normativity, Morality, and Legal Positivism" in David Plunkett, Scott J Shapiro & Kevin Toh, eds, *Dimens Norm New Essays Metaethics Jurisprud*, 1st ed (Oxford, 2019) 105 at 109-110.

⁴ Helmich Maurits, "Restraint as a Source of Judicial'Apoliticality': A Functional Reconstruction" (2020) 49:1 Netherl J Leg Philos 179-195 at 182.

accounts. Dworkin explains judges' role in law that should be considered the subject interpreting the law through the elements considered law which solely rejects legal positivism. This thought explains the rejection by explaining that the codification of legal rules is not the only object considered as law but also the other elements such as morality and political influence. The interpretative nature is regarded as the first to defend individual rights and liberty through judges' roles in the adjudication process. The defense of rights and liberty leads to the importance of the principles and wisdom of the judges and promotes liberalism in law.

The third section includes the explanation of rights and justice started when individuals seemed to assert too much on their rights and imposed government to safeguard them. This legal situation leads to the interpretation of rights as the waiver of certain individual duties limited by the law without changing their substance.⁵ Furthermore, the explanations are provided by the negativity theory of Hohfeld. They are the idea of basic human rights interpreted by the holocaust and apartheid politics, how the concept of justice leads into the revolutions of rights influenced by utilitarianism and economic analysis from Richard Posner's, and the fairness introduced by John Rawls in his theory of legal consensus.

The fourth section of this book changes the style to focus on interpretative behaviors. The following section about law and society will further analyze how the social conditions are acknowledged by their considerable influence in legal philosophy thoughts. The explanation starts from how Durkheim explains law from creating punishments as forms of social solidarity, followed by Weber's interpretations of rationality as the key element of this sociology of law approach. These two scholarly explanations lead to the concept of capitalism countered by Marx with his socialist economic theory that explains the law as merely tools for capitalists to rule beyond others. Instead of relying on the conflict of these theories, Habermas explains the law as an institution focused on communicative action to create normative integrations. On the other hand, Michael Foucault describes the law as the

⁵ Grégoire Webber, *Past, Present, and Justice in the Exercise of Judicial Responsibility* (Kingston, 2017) at 12.

practice of powers that seeks domination using disciplinary techniques to protect capitalism.

To wrap up the former explanations, Wacks uses critical legal theory as the book's last section. Critical legal theory is intended to contest the rationality of law that maintains legal systems with the possibility of fraudulent legitimacy.⁶ By contesting the rationality of law, critical legal theory using several approaches such as critical legal studies, post-modern legal theory, and feminist legal theory. These approaches argue that the lack of legal components will reduce its purpose into mere political debates. The contradiction of legal doctrines in the form of arguments cannot rely upon. The marginal purpose of law should be controlled by the exterior components outside of the law. All form of these characteristics leads to post-modernism and feminist view towards legal theories. Post-modernism seeks to understand beyond laws by considering individuals' personal experiences, and feminism looks into the rationality of law based on gender equality of men and women through human rights analysis.

Finally, this book provides illustrations of several scholars and legal activities that may increase the readers' interest. The writings have also offered a low ratio of typological errors. The index of the books may also help the readers search effectively. However, the monotone structure may tire the reader to enjoy this literature supplemented by the absence of a quick summary of the topics. The other bane is also located within the review structure, which could be more systematic, and the references, which majorly from obsolete literature. The entirety of the literature has also fulfilled its role in giving the reader simple yet effective explanations of philosophical topics of law and should also be helpful for the general readers outside of legal scholars. Moreover, this concise introduction book is recommended to buy only £8.99 for a starter book for anyone interested in legal philosophy, especially those interested in European or British-American legal philosophy.

⁶ Mark Tebbit, *Philosophy of Law: An Introduction* (Abingdon: Routledge, 2017) at 107-108.

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