

Legal Theory, Law, and Politics: Making Theory Useful

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Allan C. Hutchinson, [Hart, Fuller, and Everything After: The Politics of Legal Theory](#) (2023).

In his famous 1957 Oliver Wendell Holmes Lecture at Harvard, the renowned British legal philosopher H. L. A. Hart presented a vision of law as a system of rules validated through institutional procedures and not dependent on moral merit for their validity. Later that year, his American colleague Lon Fuller countered that only an “inner morality” imbues law with its binding force; normative statements lacking moral merit do not qualify as law. This debate, states Allan C. Hutchinson in *Hart, Fuller, and Everything After*, defined the agenda of Anglo-American jurisprudence for decades afterward; but, closely bound up with the historical and intellectual conditions of its day, he argues, it offers a poor framework for discussing the diversity of legal practices beyond the postwar liberal societies of Britain and the United States. As an historian of Ottoman law, I’m inclined to agree.

One of the great challenges that historians in fields like mine face is the difficulty of connecting the literature on modern legal theory with the normative worlds of societies far different from the ones that figures like Hart and Fuller addressed. By unpacking the seemingly timeless questions at the center of the Hart-Fuller debate, Hutchinson instead presents law as an ongoing social activity shaped by interpretation, institutional practices, and political and moral struggles. In doing so, he makes legal theory speak to these other worlds, and thereby makes it more useful for a much broader audience.

Rather than seeking a universal definition of law or a set of its necessary conceptual features, Hutchinson urges legal theorists to attend more closely to the political and value-laden dimensions of law and to the role of historical contingency in its formation. From my perspective as a legal historian, this conception of law parallels developments in our field (and anthropology) at least since the 1960s, where scholars have emphasized the co-existence of multiple legal orders and the embeddedness of law in social and political conditions in premodern and non-Western societies. Work on legal pluralism, in particular, has long treated law less as a bounded system than as a set of overlapping and competing normative orders. Without explicitly engaging this body of scholarship, Hutchinson’s account moves in a comparable direction by underlining contingency, practice, and the co-constitution of law and power. In this sense, his intervention brings legal theory closer to approaches that have become familiar in neighboring disciplines.

I assigned Hutchinson’s book in the theoretical section of my graduate seminar on Ottoman legal history this semester and found it particularly useful in two respects. First, it provided students with a clear and concise introduction to the major strands of legal theory from the mid-twentieth century onward. They were able to grasp the main positions with relative ease and to situate later developments in relation to the foundational exchange between Hart and Fuller. Second, and more importantly, the book encouraged them to see these theories as historically situated interventions rather than as timeless conceptual frameworks. This proved especially valuable in a course dealing with a different period and region, where the limits of these theories’ applicability become immediately visible.

Hutchinson does not set out to provide a theory of law tailored to historical analysis. However, from my own work, I know just how productive his conception of law as activity and process and his highlighting of the co-constitutive interaction between law, values, and political power can be. Studying, for

instance, the formation of provincial law codes in the Ottoman Empire, I see that in the premodern conditions of the fifteenth to seventeenth century, the Ottomans did not have—indeed, could not have had—a rarefied body of rules they sought to impose on the newly conquered provinces of their expanding empire. Rather, a political process of negotiation between imperial authorities and local actors, both drawing upon a range of normative resources, determined the content of law in the provinces. Each province had its own specific socio-political circumstances, and actors within them brought distinct political and moral concerns to bear, resulting in different provincial law codes. Hutchinson’s proposal, though not designed for this purpose, can help capture key features of cases like these and frame them in more analytically precise terms.

For readers interested in the intellectual history of modern legal theory, Hutchinson’s book offers an engaging guide to a foundational debate and its aftermath. For historians of law, it offers a way of seeing why dominant theoretical frameworks have limited reach, and how a shift in perspective, from law as a fixed object to law as a historically contingent practice, can make legal theory more useful.

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