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Revisiting legal positivism: H. Hart's 1958 conception of legal reasoning in the lens of G. Postema

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Abstract. The article explores the 1958 "Harvard" conception of legal reasoning presented by the British philosopher and jurist Herbert Hart, within the context of a contemporary reinterpretation by American jurist and historian of legal thought, Gerald Postema. Postema's interpretation, labeling Hart's view as "settled-meaning positivism", posits it as a unity that encompasses both the delineation of distinct types of argumentation in the realms of "core" and "penumbra" (linguistically mediated clear and controversial cases of law enforcement) and the reduction of law and legal reasoning to the "core" of rules and their established linguistic meanings. The article aims to analyze Postema's perspective in the broader context of the evolution of Hart's views on legal indeterminacy and judicial decision-making. The relevance of this topic lies in the necessity for a more comprehensive and balanced reconstruction of Hart's theory, which is paradigmatic for modern positivism and Anglophone jurisprudence, in the light of the contentious and narrow character of its assessments. The authority of the Postema's interpretation, seen as providing new insights into the work of the British jurist, adds to the relevance of this analysis. The research uses diverse, primarily hermeneutical, methods, drawing from Postema's paper and the available body of Hart's writings, as well as the representative biographical and scientific literature. The article examines the historical context of the 1958 essay's creation and the doctrine of judicial reasoning contained within it. Ultimately, while recognizing the stimulating role of Postema's re-description of the 1958 doctrine, the article finds some of its key assertions (including Hart's understanding of the nature of legal indeterminacy and judicial choice, the attribution of "settle-meaning positivism", and a doctrine of the rule of law) to be contentious or unwarranted.

Key words: H.L.A. Hart, G. Postema, legal positivism, legal reasoning, legal indeterminacy, judicial discretion, limits of law, law and language, logic in law, the rule of law

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Пересматривая юридический позитивизм: концепция юридического рассуждения Г. Харта 1958 г. в прочтении Дж. Постемы

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Аннотация. О «гарвардской» концепции юридического рассуждения 1958 г. британского философа и правоведа Герберта Харта, рассмотренной в контексте ее оригинального прочтения, предложенного в наши дни американским правоведом и историком правовой мысли, Джеральдом Постемой. Согласно последнему, концепция Харта, маркируемая как «позитивизм установленного значения», представляется единством, с одной стороны, утверждения о резком различии типов аргументации в сферах «ядра» и «полутени» (лингвистически опосредованных ясных и спорных случаях правоприменения), с другой – сведения права и юридического рассуждения к «ядру» правил, их установленному языковому значению. Целью является анализ трактовки Постемы в «сквозной» перспективе развития взглядов Харта на правовую неопределенность и судебное решение. Актуальность темы обусловлена необходимостью более объемной и взвешенной реконструкции теории Харта, парадигмальной для современного позитивизма и англоязычной юриспруденции, на фоне дискуссионности и узости ее оценок, а равно авторитетностью трактовки Постемы, открывающей новые ракурсы в осмыслении творчества британского правоведа. Исследование использует различные, прежде всего герменевтические, методы и опирается, помимо работы Постемы, на доступный сегодня корпус сочинений Харта и репрезентативную биографическую и научную литературу. Как результат в статье рассматриваются исторические условия создания очерка 1958 г., присущая ему доктрина судебного рассуждения, дается характеристика и оценка истолкования этой доктрины Постемой. В качестве выводов в статье признается стимулирующая роль прочтения и переописания Постемой доктрины 1958 г., однако его ключевые утверждения (включая понимание Хартом природы правовой неопределенности и судейского выбора, вменение ему «позитивизма установленного значения» и доктрины господства права) видятся спорными / необоснованными.

Ключевые слова: Г.Л.А. Харт, Дж. Постема, юридический позитивизм, юридическое рассуждение, правовая неопределенность, судейское усмотрение, границы права, право и язык, логика в праве, господство права

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Introduction

The article focuses on the exploration of intellectual legal history and is characterized by a dual subject of research. Firstly, it delves into the conception of law, legal indeterminacy, and judicial discretion as articulated by the distinguished British philosopher and jurist, Herbert L.A. Hart, an esteemed professor at Oxford. This formulation was initially presented in Hart's essay "Positivism and the Separation of Law and Morals" (Hart, 1958) and subsequently became a pivotal aspect of his contentious discourse with Lon Fuller, a Harvard professor and a proponent of legal naturalism (Fuller, 1958). Secondly, the article investigates the contemporary original interpretation of Hart's conception by a renowned American jurist and historian of legal thought, Gerald Postema.

The chosen topic holds significant value as an ideological and historical framework for examining the philosophical and doctrinal principles of judicial argumentation, which constitute a crucial element of modern state practices and necessitate thoughtful contemplation. Additionally, the article's primary focus lies in exploring the "cartography" of Anglo-American thought during the second half of the 20th and early 21st centuries, particularly centered on the discussions concerning the nuanced understanding and assessment of the intellectual legacy of Herbert Hart. Hart not only shaped the contemporary landscape of legal positivism but also played a pivotal role in defining the foundations, methodology and language of post-World War II English-speaking jurisprudence.

Given these parameters, the relevance of the proposed study stems from several key factors. Firstly, despite the monumental stature of H. Hart within the legal realm, the perception of his legal theory – particularly his theory of judicial reasoning – remains somewhat limited, primarily drawn from his seminal work "The Concept of Law" (Hart, 1961) and its subsequent interpretations in Anglo-American legal philosophy, notably within the debates instigated by figures such as Ronald Dworkin (Dworkin, 1978; Dworkin, 1986)) (см.: Cohen, 1984; Marmor, 2005; Postema, 2011:341 ff.; Spaak & Mindus (eds.) (eds.) , 2021: 675 ff.). Therefore, a significant research objective involves conducting a more comprehensive and balanced historical reconstruction of the British jurist's viewpoints. This entails leveraging the entirety of Hart's available oeuvre and engaging in a meticulous examination to unveil the broader and multifaceted system of his ideas, along with tracing the evolving trajectory of their development.

Secondly, in the context of the ideological and historical reconstruction of H. Hart's views, the significance of the 1958 essay highlighted in the article cannot be understated. This essay holds a distinctive place, not just as a precursor to the seminal 1961 treatise, but for introducing numerous theses and arguments that are foundational

to the author's theories on law and judicial reasoning. The essay unveils a crucial – yet often overlooked in existing literature (Shaw, 2013) – influence exerted on H. Hart by the Harvard Law School, presenting contrasting approaches to those of the British analytical positivist. This influence played a pivotal role in shaping the theoretical canon through the dialogue between English and American legal traditions and facilitated their synthesis, opening up various potential paths of development (some of which were not pursued by Hart) (Lacey, 2013). Operating within an alternative social and academic context, H. Hart departs from his typical philosophical and analytical discussions on law and adjudication, linking conceptual solutions with historical, institutional and moral-political arguments (Lacey, 2008: 1061, etc.; Shaw, 2013: 724, etc.). Consequently, the 1958 text emerges as a more than a mere precursor to the 1961 treatise, standing out as a unique and deserving subject for independent analysis in the body of work by the British jurist.

Thirdly, within this context, the examination of H. Hart's 1958 doctrine by Gerald Postema (Postema, 2010) holds significant weight. G. Potesma, a respected historian of English-language philosophical and legal thought, offers a nuanced interpretation that combines a meticulous analysis of the text with a broader view of H. Hart's works, introducing new perspectives on his Harvard-era contentions. Notably, Postema diverges from the conventional understanding of the proximity between the 1958 and 1961 approaches (cf.: Bix, 1993: 29, etc.; Lacey, 2004: 179 ff.; Marmor, 2005: 95 ff.), emphasizing differences in their perceptions of legal indeterminacy and judicial discretion. Furthermore, he connects H. Hart's theory of judicial reasoning with his conceptions of law, morality and language, categorizing it as "settled-meaning positivism", attributing to it a distinction between arguments in clear-cut and borderline cases, as well as constraining law and legal reasoning within the realm of clear linguistic and official regulation. Despite certain contentious aspects, G. Postema's interpretation offers a valuable and intellectually stimulating contribution to the discourse. It presents an alternative and comprehensive perspective on the structure and evolution of H. Hart's ideas about law and legal reasoning, facilitating their reconsideration and contextualization within contemporary debates on the boundaries of the legal system, the nature of normative governance, and the optimal manifestations of the rule of law principle.

These circumstances determined the tasks and structure of the research. The first part of the article explores the characteristics of the Herbert Hart's Harvard period, which provided a unique context for his creation of the 1958 essay, and outlines the main points of the essay on judicial reasoning. The second part of the article summarizes the descriptive and critical aspects of Gerald Postema's interpretation of the 1958 doctrine. The third part offers a detailed critical analysis of this interpretation, examining H. Hart's understanding of the nature of indeterminacy and discretion in law (the interrelation of normativity, logic and language), as well as the attribution of "settled-meaning positivism" and the doctrine of the rule of law to H. Hart, with a specific focus on clarifying G. Postema's (problematic) interpretive stances that challenge the validity of several key assessments and conclusions.

Herbert Hart at Harvard: Exploring 'Positivism and the Separation of Law and Morals' (1958)

The conception of the British philosopher and jurist, professor of Oxford University, Herbert Hart is often considered as a paradigm for modern legal positivism and a fundamental aspect of today's English-speaking legal philosophy in general (Spaak & Mindus (eds.), 2021:301 ff.). Rooted in the ideas of philosophical language analysis (J.L. Austin, L. Wittgenstein, etc.), it introduces a theoretically and methodologically updated version of classical analytical jurisprudence (Sugarman, 2005:271 ff.; MacCormick, 2008:23–30; Lacey, 2004:112 ff.). H. Hart famously rejects previous positivist accounts of law through the sovereign's orders backed by force, which, in his opinion, are unable to explain the normative nature of law and complexity of its institutional organization. The author begins with the "hermeneutic" model of a social rule, which combines both the "external aspect" – the presence of uniform behavioral practice in society, and the "internal" aspect – the acceptance of the practice by its participants as a standard of their behavior and a basis for evaluating behavior of others, and for applying measures of responsibility. He also emphasizes the absence of a single structure for legal rules ("condition – sanction"), and the difference in their regulatory functions and levels (imposing obligations or conferring rights, addressing citizens or officials, etc.). In this perspective, H. Hart portrays law as a system of primary and secondary rules: norms of the first and the second order. The latter includes, apart from the rules of change (law-making) and adjudication (law-application), the fundamental rule of recognition, which, being manifested in the agreed practice / convention of officials, establishes criteria for validity in the system, ensuring that legal rules are determined by their formal, institutional status, and not by their merits or content. This leads H. Hart to a very moderate account of positivism, primarily as a thesis about the absence of necessary conceptual connection between legal validity and moral value, while simultaneously recognizing other intersections between morality and law (historical mutual influence, shared rules and principles, possible incorporation of moral values by law and judges' obligation to follow them, the "minimum of natural law" necessary for society, etc.). An important addition to the author's concept is the thesis, considered below, about the (linguistically mediated) impossibility of exhaustive legal regulation: the recognition, along with clear cases, of borderline cases where there is no single correct legal answer and where the court must choose one of the outcomes, i.e., exercise discretion (Hart, 1961; MacCormick, 2008; Postema, 2011:261 ff.).

Most succinctly and systematically expressed in the author's seminal work, 'The Concept of Law' (1961), H. Hart's distinctive arguments were developed earlier, taking shape in his notes, educational courses, speeches and publications in the 1950s. One of the key stages of this path was the period of H. Hart's tenue as an invited visiting professor at Harvard (1956–1957), which was then the center of legal thought in the United States.

As noted in the biographical literature, this period had a significant stimulating effect on the British thinker, immersing him in a rich cultural, intellectual and academic atmosphere that was notably different from Oxford. This included the precedence of jurisprudence over philosophy, interactive teaching methods, and, most importantly, deep

contrasts in the approaches between H. Hart and Harvard (and American jurisprudence in general): while H. Hart's research was founded on meticulous, philosophically robust conceptual analysis of legal language, his American counterparts were inclined to reject the philosophical autonomy of jurisprudence (interpreted as a narrow version of legal theory), which led to a reluctance towards legal positivism associated with conceptualism and formalism (Sebok, 1995). Consequently, the esteemed dean, Roscoe Pound (Pound, 1941), who embodied the essence of jurisprudence at Harvard, championed a sociological theory of law closely tied to social sciences, focusing on the diverse functions of law in society. His viewpoints were perpetuated by the influential Harvard School of Legal Process (Hart & Sacks et al., 1994), which sought to explore the practical application of law rather than its abstract theoretical (positivist) conceptualizations. The authoritative doctrine of Lon Fuller (Fuller, 1940), a fervent advocate of the natural law theory emphasizing the "internal" / procedural morality of law, stood in opposition to H. Hart's perspectives as well (Sugarman, 2005:278-281; Lacey, 2004:179–202; Lacey, 2013:637–641; Shaw, 2013:676–689).

The intellectual landscape of American jurisprudence also had distinctive features, traditionally concentrating on issues of adjudication and the resolution of complex court cases (Hart, 1957:955–959; Hart, 1958:615; Hart, 1983:123–125). During that period, one of the central debates at Harvard revolved around the compatibility between the prevalent legal uncertainty and judicial discretion proclaimed by the American "realists" movement (O.W. Holmes, K. Llewellyn, J. Frank, etc.), and the fundamental principles and institutions of the rule of law. The realists challenged the formalist doctrine, which viewed law as a "closed system" of rules providing definitive answers to all legal queries, with judges seen as deducing such answers "automatically" or through logical processes. The realists argued that rules cannot encompass all case-specific circumstances, invite varying interpretations, and therefore have limited relevance in arguments or function mainly as a part of official rhetoric and retrospective justification. Critically, judges were portrayed as responding more to specific factual scenarios than to written rules, guided by societal norms and attitudes prevalent in their community, thereby assuming the role as "social engineers" dedicated to advancing, differentiating and safeguarding social interests and values (MacCormick, 2008:153–157; Spaak & Mindus (eds.), 2021:80 ff.; Postema, 2011:81 ff.). However, the realists did not present a comprehensive theory to direct or restrict judicial discretion, thereby raising concerns about its alignment with the principles of "the rule of law, not men". This dilemma was addressed by the Harvard School of Legal Process. Embracing the notion of indeterminacy, its members advocated for a harmonious blending of discretion and the rule of law provided that legal decisions are rendered by accountable judges in a reasoned manner, considering their institutional relationships with other branches of government, and are accompanied by detailed justifications that mirror the professionalism, rationality, and sagacity of the judiciary – elements the public can have confidence in (Hart & Sacks, 1994; Shaw, 2013:668, etc.).

The issues and perspectives discussed are directly reflected in H. Hart's works. Amidst a contrasting social and ideological landscape, the author reinterprets and defends his previous stances in a novel light. Notably, this includes the distinguished "Holmes lecture" delivered by H. Hart at Harvard on 'Positivism and the separation of law and morals' in 1957, later published in 1958 in the 'Harvard Law Review' alongside a critical

response by L. Fuller. This discourse established the foundation for a renowned debate between the two prominent jurists of the twentieth-century Anglo-American thought (Lacey, 2008:1059 ff.; Spaak & Mindus, 2021:71–74). In light of the anti-positivist sentiment prevailing at Harvard and within the broader American intellectual community, H. Hart delves into justifying the "positivist" perspective on the dichotomy between law and morality. He articulates the absence of an inherent conceptual connection between legal validity and moral principles, underscoring the significance of distinguishing questions concerning what constitutes law and whether it merits adherence (Hart, 1958:959 ff.). Through an analytical exploration of various contentious topics, such as the enduring relevance of classical analytical jurisprudence, the moral foundations of legal systems, and the discernibility of legal values, H. Hart elucidates his positivist thesis in response to the prevailing discourse. He also looks at the theoretical consequences of the experience of the Nazi state.

H. Hart's substantiation also delves into the "distinctively American" criticism of the separation thesis initiated by the realism's challenge to formalism (Hart, 1958:606)– a critique analyzed in Section III of the 1958 essay and directly pertinent to the subject of the present article. The key positions of this section can be succinctly summarized as follows.

Firstly, H. Hart, at least in part, acknowledges the value of the realists' challenge to the logical-deductive model of legal reasoning. He believes it reveals a crucial aspect of human language and thought essential for legal knowledge — the existence of debatable (normatively inexhaustible) cases of word usage, along clear ones, i.e., the presence of both a "core of settled meaning" and a "penumbra of uncertainty". This necessitates individuals applying legal rules with such terminology to "take a responsibility of deciding" their applicability in concrete cases (Hart, 1958:607 ff.).

Secondly, H. Hart shares the negative assessment of the "error of formalism" as "blind" judicial decisions in penumbral situations and emphasizes the importance for judges to realize the indeterminacy of legal rules and the need for reasoned choices (Hart, 1958:607–608, 610–611).

Thirdly, in opposition to the realists, the author notes inaccuracies in their understanding and application of the "error of formalism". On the one hand, it cannot be equated with the "excessive use" of logic or analytical tools since logic, as a formal connection of variables, does not influence the core of judicial reasoning — the interpretation of terms and qualification of particulars. On the other hand, the "error of formalism" cannot be extended to the analytical jurisprudence of J. Austin and J. Bentham (in fact, to the entire doctrine of legal positivism), as well as to the majority of cases in judicial practice where "blind" decisions, criticized by some, are actually based on different value / political (e.g., conservative) grounds (Hart, 1958:608–611).

Finally, H. Hart demonstrates that acknowledging legal indeterminacy and judicial discretion does not inherently undermine the thesis of the separation of law and morality. In his view, judges may employ socio-political, moral, or other arguments in the penumbra, but the redefinition of a legal rule (based on these considerations) by incorporating social objectives that dictate the rule's application in contentious cases, thus forming an equally vital part of the law, would be better dismissed. This perspective presents a somewhat enigmatic portrayal of what can be expressed more clearly,

indicating the "incurable incompleteness" of law, which can be transcended through reasoned choice based on objectives. On the other hand, it blurs the very concept of settled meaning of legal rules, critical for normative guidance and communication, thus obscuring the law in its "centrally important" sense (Hart, 1958:612–615).

These aspects of the 1958 essay considerably foreshadowed and laid the groundwork for H. Hart's 1961 understanding of legal indeterminacy and judicial discretion, positioning it as an intermediary stance between formalism and realism (Hart, 1961:147, etc.; cf.: Hart, 1983:125 ff.). This became in integral component of his canonical positivist legal theory (MacCormick, 2008:153–167; Schauer, 2008:1112–1115, etc.; Postema, 2011:321–325; Marmor, 2005:95 ff.; Bix, 1993:7–35) and a significant element of Western jurisprudence of the second half of the 20th and early 21st centuries. These provisions by the author are primarily referenced in the analysis of Gerald Postema, a contemporary American jurist and historian of English-speaking legal thought.

H. Hart's conception of law: Perspectives from G. Postema

In the American researcher's account, in the 1958 essay, much like in "The Concept of Law" (1961), H. Hart seeks not to state a theory of legal reasoning. Instead, he aims to draw insights from the fundamental and widely acknowledged aspects of the concept of law to rectify misconceptions about the process of legal reasoning. These misconceptions had led several American jurists to harbor deep skepticism regarding its rationality and integrity (Postema, 2010:259). According to G. Postema, H. Hart, while partly agreeing with the realists' critique of formalist jurisprudence and adjudication, reevaluates its foundations by offering a more tempered characterization (Postema, 2010:260).

Firstly, he presents an "analytical framework" concerning the issues raised by the realists. These issues are associated with a linguistically conditioned internal feature of rules, where the "core" of their established meaning is encompassed by an area of uncertainty known as the "penumbra". The application of rules within the core area involves no element of choice or decision-making, which is intrinsic to the penumbra. Secondly, H. Hart diagnoses the reasons underlying the need for decision-making and choice within the penumbra: they stem from a "logical gap" between general propositions and specific instances. Thirdly, he points to the bridgeability of this gap through rational argumentation, which guides decision-making within the penumbra but does not eliminate it. Fourthly, the author acknowledges that this presupposes a criterion for evaluating justification as reasonable (though not conclusive), linking it to considerations of how the relevant rule should be established (Postema, 2010:261–262).

In this context, G. Postema elaborates that H. Hart seeks both to constrain the realists' skeptical standpoint and address it. On the one hand, H. Hart challenges the assertion that recognizing the issues in the penumbra leads to an inevitable arbitrariness in judicial reasoning. He defends the necessity of the core of established applications for the law: without such core, neither the instrumental nature of rules in legal regulation, nor their required comprehension and use within the society would be attainable (Postema, 2010:263–264). Additionally, he emphasizes that even within the penumbra,

decisions are guided by reason (albeit in a manner distinct from the core – through analogies with past cases, adherence to recognized principles, etc.) often representing a reasoned evolution of the rule taking into account various considerations (Postema, 2010:264).

However, H. Hart, on the other hand, opposes the inclination of moderate realists to extrapolate the characteristics of the penumbra to all judicial argumentation. He dismisses the "invitation" to incorporate into a rule the goals and policies used in resolving cases at its border application and declared, based on their importance, as legitimate to be treated as the fixed core of legal rules. The author asserts, by appealing to clarity and the separation thesis, that the type of reasoning in the core is distinctly different from that available in the penumbra. He also contends that law is confined to the core established meaning, and therefore legal reasoning is limited to argumentation within the core area. According to H. Hart, the positivists' differentiation of justifications offers a clearer articulation of the truths of realism, and their separation of law as it is and as it ought to be implies that the hard core of established meaning is vital to the concept of law, and without it, the notion of rules guiding court decisions is nonsensical (Postema, 2010:266–267). This conception is termed "settled-meaning positivism" by G. Postema (Postema, 2010:267).

G. Postema assesses H. Hart's 1958 analysis critically. Firstly, the researcher argues that in 1958, unlike in "The Concept of Law" (1961), the British jurist provides an inadequate diagnosis to the penumbra problems and the necessary choice within the penumbra.

Most importantly, G. Postema highlights the narrowness of H. Hart's analysis in 1958 regarding the source of rules' indeterminacy only in terms of linguistic communication. The critic elaborates that rules can be linguistic, conceptual, or practical, and can originate from an example or a clearly expressed judgment. Hence, G. Postema considers H. Hart's alternative 1961 analysis more productive, where the problems of the penumbra are associated with the inherent vagueness of rules and similar phenomena (customs, precedents, examples), stemming not from internal deficiencies of language, but from our relative ignorance of facts and relative indeterminacy of purpose (Postema, 2010: 261–263).

Meanwhile, G. Postema identifies a significant flaw in H. Hart's 1958 diagnosis concerning the linkage between the penumbra problems and discretion with the perceived "silence" of logic in classifying concrete cases. H. Hart's assertion that logic does not offer a solution to the Kantian problem of judgment, which involves bridging the gap between the general and the particular, is deemed unsatisfactory by the critic. According to G. Postema, this gap cannot be bridged solely by logic, detailed rules, references to other standards, etc., as it necessitates an act of judgment to determine how specific empirical facts, which may transcend relevant concepts or rules in certain aspects, align with those concepts or rules. However, the critic underscores that this gap is inherent in both the penumbra and core of rules, hindering H. Hart from adequately explaining the decision-making process in judicial arguments for borderline cases (Postema, 2010:262–263).

Secondly, G. Postema challenges the realist rhetoric of "choice" employed by H. Hart in describing reasoning within the penumbra. H. Hart's emphasis on the presence

of multiple equally appealing alternatives within this realm, where legal reasons constrain but do not predetermine the judicial choices, is brought into question by G. Postema. He argues that such rhetoric obscures the fact that decisions made in the penumbra are grounded in argumentation, with officials following normative guidelines for responsible judgment and decision-making. G. Postema suggests that portraying disagreements between reasonable judges as conflicting judgments arrived at through rigorous study and supported by arguments would present a more accurate depiction (Postema, 2010:264–266).

Thirdly, and the most importantly, G. Postema rejects the validity of H. Hart's 1958 "settled-meaning positivism". In the critic's view, the principle of clarity necessitates a clear distinction between reasoning within the core and the penumbra, as well as confining law and legal argumentation solely to the core if the affirmation characterizing them are confirmed as true. Additionally, the thesis of separating law as it is from how it ought to be, while theoretically sound, does not definitively determine whether law is comprised solely of fixed rules or includes contentious considerations beyond any meaningful theory on the nature of law, rendering the separation thesis redundant (Postema, 2010:267).

According to G. Postema, Hart's critique of realism in 1958 hints at an alternative and more effective argument based on the idea that the primary function of law is to regulate human behavior through general rules, underscoring the necessity of clearly delineating law and legal reasoning (Postema, 2010:267). Meanwhile, G. Postema emphasizes that this argument is insufficient to confine the latter aspects solely to the core of rules and, in addition, it introduces antimonies concerning its practical consequences for legal regulation, potentially compromising its predictability, reasonableness and effectiveness in constraining state power (Postema, 2010:267–270). Therefore, it becomes essential to develop or supplement H. Hart's critical premise by elucidating a distinct technique of normative guidance inherent in law (as suggested in the logic of the 1958 essay) or by delving into the analysis of the implications the ideal of the rule of law holds for our comprehension of law and legal reasoning (as per H. Hart's interpretation by L. Fuller) (Postema, 2010 270).

However, G. Postema concludes that pursuing this path steers us away from "settled-meaning positivism" closer to "common law" jurisprudence, with its perception of law not as a set of discrete rules, but as a framework encompassing public practical reasoning that facilitates critical research and authoritative definition of public norms (Postema, 2010:271).

From this standpoint, on the one hand, H. Hart's perspective conceals crucial aspects of legal normative guidance: for it to be minimally effective, law must be public, systemic, discursive and argumentative, particularly by aiming not to suppress, but to subordinate disagreements to the disciplined practice of public reasoning rooted in the corpus of decisions, rules, codes and conventions of a political community (Postema, 2010:271–275). On the other hand, this viewpoint is not entirely aligned with the concept of the rule of law, which conceptualizes law as a unique way of exercising political power providing protection against the arbitrariness of someone else's will. According to G. Postema, the rule of law requires, firstly, clear and publicly available norms as effective guidance and grounds for the conduct of citizens and officials, and, secondly,

reliable public structures of mutual accountability and responsibility where the validity of officials' actions can be openly challenged in a public forum through rational deliberative reasoning, influencing not only the compliance of such actions with a specific legal norm, but also the general understanding and potency of this norm within the body of law. Structured in line with the requisites of reasonableness and accountability, legal reasoning resists the stark differentiation of argumentation in the core and penumbra, and cannot be confined solely to cases clearly settled by law (Postema, 2010:275–279).

Critical Examination of G. Postema's Reading

Gerald Postema's interpretation of Herbert Hart's 1958 essay is a unique and insightful perspective on the British jurist's views, providing a valuable addition to the ongoing discussions surrounding the comprehension and assessment of his intellectual legacy and development.

Most notably, G. Postema presents a substantial alternative understanding of the development of H. Hart's notions of legal indeterminacy and adjudication. While the conventional view regards the body of ideas in "The Concept of Law" as largely established by the time of the author's Holmes lecture at Harvard (Sugarman, 2005:281), and the doctrine of legal reasoning outlined in the 1958 essay is seen as an earlier, brief, yet substantially similar expression of the more renowned and classical 1961 doctrine of "open texture" (Lacey, 2013:645; Bix, 1993:29), G. Postema highlights significant divergences in the British jurist's approaches in 1958 and 1961. Additionally, the researcher introduces original "re-definitions" of H. Hart's 1958 conception and, to some extent, of his 1961 doctrine (primarily concerning the idea of "settled-meaning positivism"), which are significant in their incorporation into contemporary debates within Anglo-American and broader Western philosophy of law (concerning judicial powers to use moral arguments, the content of the supreme rule of recognition and boundaries of legal system, the methodology of understanding law, etc. (Cohen, 1984; Bix, 1993:27 ff.; Schauer, 2006; Spaak & Mindus, 2021:443 ff., 487 ff., 676 ff., etc.)), thereby introducing new perspectives for discussion. Consequently, G. Postema contributes to the intensification of the trend in evaluating and scrutinizing H. Hart's doctrine, which emphasizes the concepts of normative guidance and the rule of law (cf.: Fuller, 1958:632 ff.; Raz, 1995:210–237, etc.; Raz, 1979:210–228, etc.; Schauer, 2008; etc.), by challenging, the arguments of this doctrine within such a framework and outlining potential avenues for its transformation.

However, despite being based on the 1958 essay, some of G. Postema's assertions appear to lack clarity and/or justification, warranting a critical commentary.

Firstly, in reconstructing H. Hart's views on legal indeterminacy and legal reasoning, G. Postema repeatedly "completes the theory" by referencing other works of the scholar, which is important for understanding the overall trajectory of the British jurist's perspective, given the constrained objective and scope of the relevant section of H. Hart's 1958 essay (Hart, 1958:959, 606–608, etc.). Nevertheless, aside from clarifying the researcher's interpretative stance, his interpretations often come across as selective. For instance, while G. Postema offers a comprehensive reconstruction of the idea of the

rationality of discretion in contentious cases, which is only briefly mentioned in the 1958 essay and is extensively discussed in the author's Harvard memorandum "Discretion" (1956) – a memorandum found and printed after the publication of the researcher's work (cf.: Hart, 2013; MacCormick, 2008:159 ff.; Shaw, 2013:693 ff.) – he also interprets H. Hart's relatively brief and occasionally inconsistent judgments on the reasons for indeterminacy and choice in the realm of penumbra as fully crystallized positions (Postema, 2010: 261, 264–266), without adequately explicating how they differ from and contradict other, more explicit works of the British jurist, (cf.: Postema, 2010:262–263, etc.).

Secondly, in continuation of the previous points, G. Postema's interpretation of H. Hart's views on legal indeterminacy raises questions when comparing the narrow, purely linguistic conceptualization of such indeterminacy in 1958 with its balanced 1961 diagnosis related to the nature of regulation by rules, delving into the boundaries of foreseeing facts and the establishment of regulatory goals in the future (Postema, 2010:262–263). In the absence of evidence to the contrary, a more convincing (and even "natural") interpretation of the relevant fragments of the 1958 essay can be proposed, based on the presumed integrity and progressing development of H. Hart's views. This approach entails reading the thinker's individual works in a chronologically consistent and holistic perspective, particularly within the broader context of his work. From this standpoint, H. Hart unveils a conception of a more complex system of sources of indeterminacy, drawing from the general philosophical principles of the author's approach (e.g., justification of the "open texture" by F. Waismann (1951; Hart, 1961:128; Hart, 1983:274–275)) and presented across his various works (including those preceding the 1957 Holmes lecture) (Hart, 2013; Hart, 1961:124–136; Hart, 1983:103–108, etc.). Within this framework, several groups of indeterminacy factors can be distinguished (assumed by H. Hart to be in unity, rather than in opposition to each other (cf.: Hart, 1961:124–136)). These factors encompass features of an exceedingly complex and changeable world, as well as the inherent limitations in human understanding of it (Hart, 2013:661–662; Hart, 1961:128; Hart, 1983:103, 269–270, 274–275; Hart, 2016:465). Additionally, they include the specific aspects of language (implying the conventional, social, and normative connection between signs and referents, which can lead to indeterminacy in atypical, unforeseen circumstances, even for experts (Hart, 1955:258–260; Hart, 1957:968 ff.; Hart, 1961:24 ff.; Hart, 1983:103, 274–275). Furthermore, the need for reasonable normative regulation should also be mentioned. Within the above conditions, its arrangement remains in tension with the predetermined rigid fixation of meanings of linguistic terms / rules and demands preservation of their possibilities for rational redefinition in new circumstances (Hart, 1956:658 ff.; Hart, 1958:608, etc.; Hart, 1961:128 ff.; Hart, 1983:104–105, 270–271). All these factors inevitably shape the functioning of law as a social phenomenon and institution, establishing parameters of legal indeterminacy and methods of addressing it (Hart, 1956:655, 663–664; Hart, 1961:130–134). In connection with G. Postema's observations, it is possible to recognize the specific nuances of the particular way H. Hart expressed his position in the 1958 essay, contrasting it with his 1961 treatise or other works. However, it is debatable to suggest that the British thinker changed his approach to explaining the sources of legal indeterminacy.

Thirdly, a similar concern is raised by G. Postema's attribution to H. Hart in 1958 of a (flawed) doctrine of judicial choice in the penumbra seen as a "Kantian" judgment that bridges the gap between a general rule and an individual instance, and is generated out of the logical silence on the qualification of particulars. This is contrasted by G. Postema with the author's 1961 approach (Postema, 2010:262–263). In H. Hart's exposition of his position in section III of the 1958 essay, elements of inconsistency can indeed be discerned. However, beyond G. Postema's observation (which is somewhat less apparent, as H. Hart's thesis under discussion primarily addresses the role of logic in judicial proceedings in general (Hart, 1958:610)), such inconsistency is more notably evident in the jurist's discussion of atypical cases, where a judicial decision is seemingly derived from the inability of facts to self-determine their legal categorizations (Hart, 1958:607), or in his simultaneous assertions concerning the inadequacy and insufficiency of logical deduction for arriving at a judicial decision (Hart, 1958:607–608). Yet, notwithstanding these points, G. Postema's reading – potentially projecting onto H. Hart's certain ideas discussed by a number of realists (cf.: Postema, 2011:111–118) – remains contentious within the context of the 1958 text and lacks persuasiveness in the broader context of the British jurist's work.

Primarily, when considering the issues of legal indeterminacy and adjudication in his 1958 essay and his other works, H. Hart does not commence from the "Kantian" problem and model of judgment, but rather from a range of problems stemming from the relationships between a sign and a referent, a term / rule and a situation (cf.: Bix, 1993:7 ff.; Marmor, 2005:96 ff.). Aligned with the tenets of linguistic-analytical philosophy, the author proceeds from the absence of any "objective" connection between them (repeatedly highlighting the lack of self-identification by facts and the non-determination of their own application by a rule (Hart, 1955:258; Hart, 1958:607; Hart, 1961: 126; Hart, 1983:106)). This connection is established by social convention, through community usage. The existence of such convention defines the meaning of a legal rule and ensures its straightforward application (there is no usage of the rhetoric of "choice" or a "gap" between the general and the particular here; rather, it is rejected), while the absence of such convention gives rise to contentious cases requiring discretionary judgment (Hart, 1955:258–260; Hart, 1957:968; Hart, 1961:126; Hart, 1983:106).

Regarding the stated doctrine, H. Hart's 1958 assertions about logic in judicial argumentation are of subordinate and private nature, and also are typical of the author's earlier and later works. H. Hart is skeptical toward the logical interpretation of judicial reasoning, even in borderline cases (cf.: Marmor: 2005:97–98). He views logic only as a formal connection of variables, with no bearing on the establishment of meanings and qualification of specific cases (Hart, 1955:259; Hart, 1957:955–957; Hart, 1958:610–611; Hart, 1983:99–105, 130). The British jurist's appeal to the topic of logic in 1958, contrary to G. Postema, is not motivated by the recognition of its "silence" as the exclusive cause of indeterminacy and choice in the penumbra, but by criticism of the realist challenge to formalism, contesting the logical-deductive picture of adjudication. H. Hart's position in 1958 and beyond is that the judicial "error of formalism" does not lie in the notorious "excessive use" of logic but in "blind" decisions in the penumbra, where a judge's conscious and responsible choice is required (Hart: 1958: 610–611, 614–615; Hart 1983:104–105, 130–132, 152–153).

Fourthly, from a general theoretical perspective, one can partially agree with G. Postema regarding the limitations of the "choice" terminology used by H. Hart to describe official decisions in the penumbra, which does not emphasize both the institutional necessity and the practice of rational argumentation.

At the same time, G. Postema's criticisms are viewed as excessive here. In contrast to the relevant elaborate formulations of the critic, the terminology of choice succinctly conveys the essence of H. Hart's stance (the inevitability of discretion in contentious cases). Additionally, this is accompanied by Hart's remarks on the reasonableness of discretionary choice, and its determination by law (Hart, 1955:261–262; Hart, 1956:658, etc.; Hart, 1958:608, 611, etc.; Hart, 1983:7, 106–108, 132, 134, etc.; Hart, 2016:465, 467; Hart, 1994:237 ff.), asserting in different terms a number of theses significant for G. Postema (cf.: Postema: 2011:323–324). Lastly, the notions of the normative status and consequences of discretionary acts emphasized by the critic are not necessarily contradicted by H. Hart's rhetoric. In fact, they are acknowledged by him (cf.: MacCormick, 2008: 159 ff.) and, in any case, are seen as compatible with his general account of adjudication. The question of the completeness of the author's theory while reconstructing his views should be discussed under the principle of historicism. H. Hart argues in a given historical context, polemicizing with specific ideological-historical opponents (realism and formalism), and in this context, his argumentation seems sufficient to declare an appropriate and justified position (the doctrine of moderate legal indeterminacy and judicial discretion).

Fifthly, there seems to be intellectually provocative, yet rather controversial and echoing the interpretations by L. Fuller (Fuller, 1958), R. Dworkin (Dworkin, 1978:14–130; Dworkin, 1986:114–150), J. Raz (Cohen, 1984:73–87; Raz, 1979: 53–77, 180–209; Raz, 1995:326–340) and others. The first thesis pertains to the claim about the sharp difference between types of argumentation in the spheres of core and penumbra, while the second thesis involves the reduction of law and legal reasoning to the rules' core or established meaning (Postema, 2010:267).

H. Hart does distinguish judicial reasoning in clear and borderline cases, but the "sharpness" of their differentiation depends on the chosen focus or criteria, thus rendering G. Postema's terminology somewhat imprecise. Although H. Hart separates the situations of core and penumbra (Hart, 2013: 653; Hart, 1958: 614; cf.: Marmor, 2005: 95 ff.; Schauer, 2008: 1109 ff.), there seems to be flexibility in the strictness of the boundaries drawn here, allowing for a varying degrees of problematic issues (Hart, 1983: 107, 134, etc.; cf.: Raz, 1979: 73–74, 182, etc.). It is essential to note that both types of situations are considered within the framework of the general model of adjudication as an application of a rule to a specific case. Therefore, discretionary judgment in the penumbra is not an instance of unlimited law-making, but primarily an instance of law-application, albeit in special, atypical circumstances with insufficient guidance of conventions, and must be supplemented by other argumentative resources (Hart, 1955:253–255; Hart, 1956:658, 661 ff.; cf.: Hart, 2016:465 ff.; Hart, 1994:272 ff.). The emphasis on socio-political goals as a way of solving cases in the penumbra, sharply contrasting the "mechanical" application of rules in clear cases, is not fundamental or universal for H. Hart, but rather stemmed from the subject matter of discussion

influenced by peculiarities of the American legal system and the agenda of Harvard jurisprudence of that time.

The second thesis, which characterizes H. Hart's understanding of the boundaries of law and legal reasoning, appears to be more challenging to assess.

To begin with, it seems that in the 1958 essay, as in many of his other works from this period, H. Hart does not directly reduce law to the settled meaning of legal standards. Contrary to G. Postema's interpretation, Hart suggests that the core of the rules constitutes law only in a "centrally important sense". This core should not be equated with the goal-oriented arguments used to resolve controversial cases, which are often proposed for inclusion within the concept of a rule (and, in fact, within the broader concept of law) (Hart, 1958:614). Importantly, Hart does not oppose the core of the rules to their periphery here, nor does he advocate for the "de-juridization" of the latter. He refrains from asserting strict boundaries for law and, at prima facie, does not even approach the question in those terms or think in the same framework employed by his critics.

The methodology of "resolute reading" as applied to H. Hart's 1958 essay reveals inherent complexities that challenge G. Postema's conclusions. This approach seeks to provide a better understanding of Hart by viewing his work in a unified context, aligning with his overarching principles. It attempts to reconcile past ideas with future interpretations, suggesting that if Hart were engaged in a hypothetical dialogue with the interpreter, he might endorse their perspective, even if it diverges from his explicit statements (Forsberg, Conant, 2013:158; cf.: Dworkin, 1986:59 ff.). However, such an interpretative framework can yield multiple viewpoints, suggesting that Hart's 1958 text allows for various interpretations. G. Postema's inquiry into the boundaries of law could arguably lead to expressive confusion for "Harvard" H. Hart.

The researcher's interpretation is evidently grounded in the separability thesis, which is fundamental for H. Hart. This thesis emphasizes the necessity of a clear distinction between law and morality. In the context of adjudication, this means differentiating between, on the one hand, the core of existing legal rules, and on the other hand, the goals and policies that serve as standards of the "ought" in the penumbra (Hart, 1958:612–615). However, in contrast to G. Postema's viewpoint, it is also possible to adopt an alternative "resolute" reading. This perspective appears to resonate more closely with the overarching philosophical and philosophical-legal framework espoused by Hart, reflecting his theoretical positions and the form of their expression.

The model of language as an actual speech practice, adopted by H. Hart as the basis for conceptualizing law, implies a social and conventional connection between a word and a situation. It suggests the impossibility of exhaustively settling norms, leading to numerous instances of vagueness, ambiguity, and logical inconsistency in word usage. For H. Hart, a theory that imposes strict boundaries in this regard would be arbitrary and contrary to the facts (cf.: Hart, 1983:22 ff., 274–275; Hart, 1957:968–971; Hart, 1961:5–6, 13–17).

Therefore, the author understands law as a "family of concepts", akin to a system of activity elements (Hart, 1961:16), and describes it as a "union" of rules (Hart, 1961:79 ff.). These concepts are not merely restricted to well-established or categorical standards (as noted by Dworkin, 1978:24, etc.), but may encompass a realm of "open

texture" with varying scopes while still maintaining their essence as rules (cf.: Hart, 1955:254; Hart, 2013:656 ff.; Hart, 1961:132, 139, etc.; Hart, 1994:262–263).

It is noteworthy that in the 1958 text, H. Hart does not primarily discuss the "incompleteness" (Hart, 1958:612, 614) or the "gap" in law, but specifically addresses its vagueness, openness, and uncertainty or indeterminacy. He highlights the coexistence of a "hard core of settled meaning" and a "penumbra of debatable cases" within the legal realm (Hart, 1958: 606–615). The shift in the author's rhetoric in later works (Hart, 2016:462, etc.; Hart, 1994:252–254, 272 ff.) may indicate a shift in his perspectives in response to subsequent interpretations and criticisms (cf.: Dworkin, 1978:14–130; Cohen, 1984; Bix, 1993:27–35; Postema, 2011:341 ff.).

The aforementioned hold especially true regarding H. Hart's understanding of legal reasoning: he never explicitly states that there is legal reasoning in one case and none in the other (unlike, for example, the positivist doctrine by J. Raz (Raz, 1979:53–77, 180–209; Raz, 1995:326–340)). It seems that even within the defense of the separation thesis in 1958, H. Hart does not delineate such rigid boundaries between law and morality, as presented by G. Postema. Furthermore, the author's work suggests that judicial choice and discretion involve the resolution of problematic cases in light of clear ones; in other words, they represent a rational continuation and development of existing law (through reference to existing but insufficiently ordered analogies, common principles, assumptions, etc.) (Hart, 1955:261–262; Hart, 2013:661 ff.; Hart, 1983:7, 106–108, etc.; Hart, 2016: 467; Hart, 1994:237 ff.; cf.: Postema, 2010:264–266). This form of justification — bearing striking resemblance to the Harvard School of Legal Process (Shaw, 2013:710 ff.) — might indeed be viewed as "going beyond the limits of law", yet this characterization appears to misrepresent H. Hart's intended idea. Finally, within the author's conceptual framework, acts employing various discretionary justifications (including social goals and policies, ideological attitudes, moral ought, standards of rationality, language, interpretation, etc.) seemingly carry the same legal or official status as that attributed by the author, ceteris paribus, to "blind" decisions of formalist judges (Hart, 1958:612).

In light of these points, G. Postema's "resolute" reading of H. Hart, while feasible and having its own justifications, appears to be somewhat incongruent with the 1958 doctrine; instead it could be seen as an effort to present this doctrine in the terminology of later legal theories, or even an attempt to ascertain a particular position for the British jurist within modern disputes in Anglo-American jurisprudence.

Sixth, regardless of the acknowledgment of G. Postema's interpretation of H. Hart's 1958 doctrine, it is pertinent to separately address the appropriateness of using the label "settled-meaning positivism" (Postema, 2010: 267).

The main arguments against such usage are rooted in the traditional understanding of the status of the legal positivist theory. Thus, in his works from 1958, 1961 and beyond (with the exception of several later texts, such as Hart, 2016; Hart, 1994), H. Hart primarily associates positivism with the thesis that there is no necessary connection between law and morality, which is manifested in the conceptual distinction between legal validity and moral value (Hart, 1958:959 ff.; Hart, 1961:185–186, etc.). In other words, he addresses positivism specifically as a theory concerning the concept or nature of law, rather than as a theory of adjudication. This perspective is often echoed by

authoritative followers of Hart, such as J. Raz and J. Coleman, who also emphasize the lack of any necessary connection between these types of theorizing (Raz, 1979:34–52; Raz, 2009: 47–87; Coleman, 2002).

Moreover, this position aligns with assertions regarding the peripheral nature of adjudication issues for H. Hart (Lacey, 2004: 158, etc.; Schauer, 2006:874 ff.). This viewpoint includes the controversial assessment by G. Postema, who argues that Hart's texts from 1958 and 1961, do not demonstrate an effort to establish his own doctrine of legal reasoning but rather aim at a correction of misinterpretations regarding it, framed within the broader context of the concept of law (Postema, 2010:259; cf.: Postema: 2011:322, 325).

Meanwhile, the status of positivism remains a subject of debate, even among positivists themselves (Spaak & Mindus, 2021), G. Postema's interpretation offers a broader perspective on understanding the doctrine of the British jurist. H. Hart, in 1958, intertwined the issues of law and adjudication, focusing on legal reasoning while advocating for separation of law and morality. This approach highlights the interrelationships between H. Hart's positivist beliefs and other elements of his legal theory, perhaps more effectively than his 1961 treatise (Schauer, 2006:874–877; Lacey, 2008:1061 ff.). These relationships later allowed H. Hart, as noted by R. Dworkin (1978:17, etc.), to expand the content of his positivist doctrine, incorporating the "discretion thesis" (Hart, 2016:462, etc.). In contrast, unlike traditional debates on positivism and adjudication, G. Postema's interpretation links Hart's positivist doctrine of law with his linguistic and philosophical views. According to G. Postema, the natural limits of language determine the boundaries of legal regulation, while settled meanings form the basis for social rules and ensure the clarity of legal communication, regulation, interpretation, and adjudication. All this seems to show the heuristic value of G. Postema's term "settled-meaning positivism" introduced to describe Hart's approach, acknowledging the controversial interpretations of Hart's 1958 essay, and the potential for its alternative readings.

Finally, the aforementioned objections to G. Postema's interpretation of the 1958 doctrine also affect his assessment of H. Hart's arguments supporting his approach, as well as their subsequent development (Postema, 2010:271–279). As noted, if the 1958 doctrine is characterized by a "sharp" contrast between core and penumbra argumentation, it is unlikely that law and legal reasoning are simply reduced to settled normative meanings. Instead, arguments of clarity and separability with their limited force (Postema, 2010:266–267) serve a different purpose. The same applies to H. Hart's more fundamental and "fruitful" argument (Postema, 2010: 267) regarding normative / legal regulation, with the previously described moderate account of (in)determinacy (Hart, 1958:607, 615, etc.). Contrary to G. Postema's conclusions, which align with J. Raz (Raz, 1979:34–52), the guidance by general rules in law requires functionally sufficient, rather than exhaustive, clarity in their identification (cf.: Coleman, 2002; Hart, 1994:351–352).

Furthermore, one can support G. Postema in advancing the argument of normative guidance, which holds significance in the context of debates within modern Anglo-American jurisprudence (cf.: Fuller, 1958; Dworkin, 1978; Raz, 1995:210–237; Schauer, 2008; etc.). The question, however, is to what extent the critic's introduction –

drawing from L. Fuller's perspective (Fuller, 1958:632 ff.) – of the "normative" interpretation of the 1958 doctrine as part of the theory or ideal of the rule of law aligns with the methodological status of H. Hart's own constructions.

Since the outset of his career as a jurist, H. Hart advocated for the traditions of analytical jurisprudence as a distinct field of study dedicated to fundamental legal concepts. He proposed reforms aligned with the principles of linguistic-analytical philosophy (Hart, 1955; Hart, 1957; Hart, 1983: 1–6, 271 ff.; Sugarman, 2005: 290 ff.). Throughout his works before and after 1958, he sought to construct a general, descriptive, and value-neutral theory of law (Hart, 1961: v; Hart, 1994:239–244).

The 1958 essay is particularly noteworthy as it is not only defends the intellectual, but also the moral significance of the thesis on the conceptual separation of law and morality. Additionally, it introduces practical, ethico-political, and normative arguments in favor of a positivist / analytical approach of defining legal concepts (Lacey, 2008; Schauer, 2008; Zipursky, 2008). Biographically, this appears closely tied to the setting of Harvard (American) jurisprudence, where H. Hart, as an analyst, had to consider the viewpoints of an "audience", skeptical of conceptualism. The audience was focused on adjudication problems and utilized value-teleological and socio-institutional tools to address them (Lacey, 2013:637 ff.; Shaw, 2013:676 ff.; Spaak & Mindus, 2021:71–74).

This contextual framework also applies to H. Hart's exploration of judicial reasoning in section III of the 1958 essay. Here, the author's primarily analytical theory describing the realism challenge is enhanced with elements which bear normative implications: a proposition about the necessity of rational and responsible decisions in the penumbra, and arguments concerning the most persuasive rationale for a judge's use of socio-political objectives and policies. G. Postema's interpretation adds a further normative facet related to the linguistically mediated demarcation of the boundaries of legal system and to its implications for regulation, judicial proceedings, and the advancement of the rule of law. Therefore, the acknowledged cultural and intellectual context in which H. Hart's 1958 conception was formulated and perceived, along with the practical, ethical and political arguments utilized, fully justifies G. Postema's chosen approach to the interpreting and developing / criticizing this theory of judicial reasoning as normative.

In the meantime, it appears that this interpretation of H. Hart's 1958 views should be constrained. Even when formulating normative arguments, the British thinker does not elaborate a fully developed theory or ideal of the rule of law, especially within the framework of the doctrine of legal reasoning, and, as far as is known, does not set such a goal for himself (Marmor, 2005:105). This interpretation may be considered theoretically and practically fruitful and competitive (Schauer, 2008; Zipursky, 2008; MacCormick, 2008:158 ff.), and for some, it is the only justified one (Dworkin, 1986:87 ff.). However, it is unlikely to be wholly "authentic" in relation to the considered constructs of Herbert Hart.

Conclusions

The work of Gerald Postema analyzed in this article presents an original, intellectually stimulating "reading" of H. Hart's classic 1958 conception of law and legal

reasoning. It unveils connections and nuances in the thinker's views, which are important in discussing and evaluating his work, as well as in clarifying the general landscape of modern Anglo-American positivism and its debates with approaches of realism, interpretivism, natural law, etc. However, in several significant aspects, such reading seems unclear in its assumptions and / or unwarranted in substantive and methodological reconstruction of the doctrine of the British jurist (in terms of both the 1958 text and the "cross-cutting" perspective of his works), including the fundamental concept for G. Postema and polemically charged idea of the "settled-meaning legal positivism".

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