

## ترجمة ملخصات المحتوى بالإنجليزية

### Summaries of Researches and Articles



## Critique of John Austin's Theory of Positive Law

Hisham al -Ismaili<sup>[1]</sup>

Legal theories are impacted by philosophical concepts and trends which have exerted a deep influence during the nineteenth century on what is now called “legal sciences.” This essay presents a critique of John Austin’s theory of positive law –a topic which is tackled from a jurisprudential and analytical aspect– and its impact on the modern theory of law. This essay explores Austin’s theory and applies it on the comprehension of law as a social phenomenon. Not only does this essay analyze the phenomenon of positive law, but it also includes commentaries on similar phenomena in John Austin’s theory such as Command Theory, International Law, Sovereign Authority, and Positive Ethics.

Austin’s theory on law was one of the most prominent theoretical approaches in England during the nineteenth century. It formed the basis for new concepts and critical analyses of subsequent positive law theories and provided a solid basis for explaining some branches of law, especially criminal law. The essay provides a critical analysis of Austin’s theory which opens the way for the further development of the theory of positive law.

**Keywords:** Command Theory, Sovereign Ruler, Positive Law, Positive Ethics, Legal Empirical Sciences.

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## Philosophy of Right According to Hegel

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Hegel's (1771 -1831) *Grundlinien der Philosophie des Rechts* (1820) (*Elements of the Philosophy of Right*) is considered his most controversial work, since it includes –in addition to a history of moral, legal and political philosophy– a bold analysis of revolutionary modernity (coming after the French Revolution). This book has inspired a number of political trends and movements from the Right Wing and the Left Wing, and is repeatedly being re -read with a modern light. This research focuses on the main aspects of Hegel's concept on the philosophy of right. However, it is essential before discussing Hegel's position on right and the principles of right, to review Kant's theory since Hegel based his philosophy on criticizing Kant, and without Kant there would be no Hegel.

**Keywords:** Philosophy, Right, Law, Philosophy of Law, Reason, Ethics, State, Constitution, Authority, Philosophy of History.

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## Taking Rights Seriously: Dworkin Between Expediency and Perspectives on Natural Rights

Khanjar Hamiye <sup>[1]</sup>

In his book *Taking Rights Seriously*, Dworkin primarily focuses on obligatory legal procedures whether in law or politics. In this regard, Dworkin's theory of law and his criticism of legal positivism determine the general framework of his theory on politics. Dworkin conceives of law and politics in terms of the "right to equality," with the goal being to exhibit equal concern and respect for individuals. However, while Dworkin regards legal processes as a matter of principle, directed at viewing our relationships with others through the lens of justice, he treats the political process as concerned solely with politics and focused on promoting the common good. The result which Dworkin reaches is an original but distinctive account of law and politics. Although Dworkin views a rights -based judicial review as legitimately superior to expedient democratic decisions, his account of legal discussions is in itself democratic –as demonstrated by his view of civil disobedience - and can apply to legislative committees as much as to courts, if not more.

Thus, one of the aims of Dworkin's book is to provide a theory of natural rights. Dworkin's theory is actually new and interesting in two ways. On one hand, Dworkin argues that the common belief that liberty and equality are fundamentally incompatible with each other is false because various liberty rights are derived from a form of the right to equality – what Dworkin calls the right to equal attention and respect. On the other hand, Dworkin believes that the idea of a general right to liberty, which can conflict with claims of equality, is an incohesive idea.

**Keywords:** Rights, Expediency, Equality, Legal Positivism, Democracy, Judicial Review, Civil Disobedience, Right to Respect, Care, Liberty, Model of Rules, Model of Laws.

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## A Critique of Austin's Philosophy of Law: Crisis in the Relation between Law and Ethics

Rabeh bin Gharib<sup>[1]</sup>

The connection between ethics and law has occupied human thought in general and legal thought to a greater extent. We can almost state that it is not possible to find a theory in legal jurisprudence which is devoid of an intellectual debate on law and ethics, a problematic subject matter which forcefully imposes itself on law experts. Contemporary thought has witnessed the contradicting ideas and ramifications of certain systems of thought. For instance, naturalists call for the supremacy of natural law and positive law, while positivists emphasize the separation of law and values based on the principle of the relativity of values. However, reality confirms that there is a close connection between law and ethics, that positive law is not considered a value in itself, and that positive law is only considered acceptable to the level of its compatibility with basic values, especially the value of justice. We find that the modern positive legal system contains many legal regulations that are not interpreted on the basis of the principles of justice, morality, security and stability. Among these regulations is the commitment to the principle of rejecting unjust enrichment and undue payments, the Prima Facie Theory, obsolescence, the theory of unfairness, and so forth. To the extent that the legal system confirms the basic values it carries, it will be effective. In fact, it might be stated that values in relation to law, especially the value of justice, are like the soul to the body.

The idea of legal positivism in Britain is linked to names such as Jeremy Bentham (1748 -1832) and John Austin (1790 -1859). Until recently, it was customary to call Austin "the founder of the philosophy of English law." Austin called for the separation of law from any moral value, and was hostile to the Church and to natural law. This essay discusses, critiques, and refutes Austin's legal analytical theory.

**Keywords:** Austin, Law, Ethics, Positivism.

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