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Repensar el derecho, a la luz del pensamiento de Hart, Dworkin y Nino

Rethinking Law in Light of the Thought of Hart, Dworkin, and Nino

Repensar o direito, à luz do pensamento de Hart, Dworkin e Nino

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Resumen
Repensar el derecho, desde las ideas de Hart, Dworkin y Santiago Nino, en un escenario actual y con una visión prospectiva, donde convergen la inteligencia artificial, los datos, algoritmos y neurotecnologías, nos obliga a sumar el conocimiento adquirido sobre la institucionalización del derecho, la identidad de la norma y los principios, en la consolidación de un Estado donde la democracia no solo es una estructura jurídica o un régimen político sino un sistema de vida, que debe buscar proteger el carácter ontológico del ser humano y la familia humana así como la perpetuación del reconocimiento y salvaguarda de los derechos humanos, por encima de cualquier tipo de optimización tecnológica.

Palabras Clave: Derecho, positivismo, iusnaturalismo, norma, principio, inteligencia artificial, datos, algoritmos, neurotecnologías, ser humano, democracia, derechos humanos.

Abstract
Rethinking law through the ideas of Hart, Dworkin, and Santiago Nino, in the present context and from a forward-looking perspective in which artificial intelligence, data, algorithms, and neurotechnologies converge, requires us to draw on the knowledge gained about the institutionalization of law, the identity of legal norms, and principles to consolidate a State in which democracy is not merely a legal structure or a political regime, but a way of life. Such a State must seek to protect the ontological nature of human beings and the human family, as well as ensure the continued recognition and safeguarding of human rights, above any form of technological optimization.

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Keywords: Law, positivism, natural law theory, norm, principle, artificial intelligence, data, algorithms, neurotechnologies, human being, democracy, human rights.

Resumo
Repensar o direito a partir das ideias de Hart, Dworkin e Santiago Nino, no cenário atual e com uma visão prospectiva, em que convergem a inteligência artificial, os dados, os algoritmos e as neurotecnologias, exige que integremos o conhecimento adquirido sobre a institucionalização do direito, a identidade da norma e os princípios à consolidação de um Estado em que a democracia não seja apenas uma estrutura jurídica ou um regime político, mas um modo de vida. Esse Estado deve buscar proteger a natureza ontológica do ser humano e da família humana, bem como assegurar a continuidade do reconhecimento e da salvaguarda dos direitos humanos, acima de qualquer forma de otimização tecnológica.

Palavras-chave: Direito, positivismo, jusnaturalismo, norma, princípio, inteligência artificial, dados, algoritmos, neurotecnologias, ser humano, democracia, direitos humanos.

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Introduction

Given the profound transformations we are experiencing today, rethinking law has become essential, as we face significant challenges that transcend the regulation of legal frameworks in an era in which artificial intelligence, data, algorithms, digital platforms, and neurotechnologies, among other things, converge. This research draws on the insights of three major authors whose ideas differ but nevertheless contribute, throughout the course of normative development and the construction of Contemporary Legal Theory, the necessary foundations for reconsidering the institutionalization of law, the application of principles, and deliberation in a nation's democratic life—subjects that lead us to turn to Hart, Dworkin, and Santiago Nino.

The aim is to consider the major ideas and reflections accumulated throughout a period of history, compiling them and conducting a bibliographic analysis, while adopting a forward-looking perspective to interweave the different proposals of these theorists with current conditions. These are settings in which the algorithm becomes the script of the play, the text to be followed in a space where artificial intelligence has moved from simple data analysis to creating content and subsequently serving as systems that act autonomously, making and executing decisions on their own.

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To discuss Contemporary Legal Theory requires reflection on all the ways in which Law has been created—or, for some, constructed; consideration of the body of knowledge describing its development and the transformation it has undergone; its conception as a science, system, foundation, and norm, among other things; its conceptual trajectory; its connection with language, on the understanding that the attribution of meanings is determined by contexts; the various discourses concerning its recognition; the construction of the legal norm, its concept, validity, efficacy, and classification; the legal system, its genesis, evolution, and plurality; the epistemic grounds of legal reasoning itself and of rational discursive reasoning; the legal order; judicial independence and impartiality; legal argumentation; interpretation; and so many other subjects framed by various philosophical schools that ask, among other questions: What is law? How is it made? How is it being interpreted? Nor should we fail to mention the central purpose, expressed in the need to rethink law, whose metamorphosis is not yet complete.

Development

Contemporary Legal Theory encompasses the body of knowledge detailing the origin and genetic evolution, as some call it, of law, which manifests itself as an interdisciplinary phenomenon or, as López (2020, p. 285) describes it, an "openly interdisciplinary discipline." Within it, contributions are made and framed through "more frequent collaborative exchanges among researchers drawn from different fields who work together on a common problem" (Henao, 2017, p. 183). These describe the transformation of the normative phenomenon, which bears witness to the tireless pursuit of aligning its content with the peaceful functioning of social, legal, political, and all other kinds of relations; which chooses to become a tabula rasa for subjects such as argumentation and interpretation—certainly only some of its many topics—continually advancing in the search for new knowledge, while always considering it appropriate to bring together diverse positions concerning the environment that sustains law, "insofar as reality, understood as an accumulation of both interpretive and argumentative variables, provides an array of theoretical possibilities for approaching its study" (León, 2008, p. 32). It is a seedbed whose justification emerges from keeping in mind that law must always be constructed for the good of humanity. Accordingly, in this research we will undertake a brief journey through ideological models ranging from soft positivism to natural law theory, from Hartian thought through some of the ideas of Dworkin and Santiago Nino, with the aim of looking toward the future of Legal Theory.

A Look at the Thought of Hart, Dworkin, and Nino

Through this trilogy of authors, moving through Hartian analytical positivism, the relevance and significance of Dorkinian ideas and his progressive liberalism, as well as Santiago Nino's thought framed by the ideas of deliberative democracy, we will traverse the conceptual life of law, or at least the aspiration to recognize it—for some descriptively and for others normatively—in the legal sphere. In doing so, we recall Hart's observation that these statements are sometimes illuminating and sometimes somewhat confusing (Hart, 1961, p. 3), yet always contribute to its understanding.

Herbert Lionel Adolphus Hart was born in Harrogate, Yorkshire, United Kingdom, on July 18, 1907, and died "on a cold winter morning—December 19, 1992—at the age of 85, in his sleep" (Mora, 2017, pp. 338 and 358). In the first chapter, "Persistent Questions," of his book *The Concept of Law*, translated by Genaro R. Carrió, he wrote that among the most frequently repeated questions, to which serious thinkers have offered a great many answers in "very diverse, strange, and even paradoxical ways, is the question:

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What is law?" (Hart, 1961, p. 1). Authors such as Culver, referring to Hart, noted that this question interwove concepts in order to achieve an understanding of law, stating that "law must be addressed in its relationship with other concepts such as social rules, morality, and coercion" (Colver, 2011, pp. 86, 87), given the relational approach to these subjects, thereby making it possible to arrive at a better understanding of the concept of law.

It is important to mention the necessary reconnection among concepts linked in Hartian thought when seeking to define what law is, and how, as Hart (1961, p. 1) notes, diverse opinions have been expressed with devotion and eloquence, even almost as epiphanies. Some—Llewellyn, Holmes, Gray, Austin, and Kelsen, as cited by Hart—have argued that law is what "officials do about disputes […] the prophecies of what the courts will do […] statutes are sources of law…not parts of law itself. Constitutional law is nothing other than positive morality […]. Law is the primary norm that establishes the sanction" (Hart, 1961, p. 2).

Conversely, he emphatically states that "statutes are law, at least one kind of law, although there are others […] law cannot mean simply what officials do or what courts will do, since a rule of law is required for someone to be an official or a judge" (Hart, 1961, p. 2). The author observes that these arguments have been advanced by jurists whose work has increased our understanding of law, but whose brilliance has obscured the overall view. What is interesting is to see how Hart, employing an analytical methodology, notes the great ease with which we cite examples of law, in contrast to the answers provided through theoretical debates. There is a common understanding of legal rules and the legal system, yet Hart asks why the question "What is law?" nevertheless persists (Hart, 1961, pp. 3, 4). He suggests that this may be because there are doubtful cases outside the clear, typical cases constituted by the legal systems of Modern States, cases whose legal character causes jurists to hesitate. As doubtful cases, he identifies the persistence of primitive law and international law, although he makes clear that these cases cannot provide an answer to the dynamics of the nature of law (Hart, 1961, p. 4).

Elsewhere, he states that "the profound perplexity that has kept the question alive is not due to ignorance or forgetfulness, or even to an inability to recognize the phenomena to which the word 'law' commonly refers" (Hart, 1961, p. 6). It is therefore important to know what has perplexed those who ask "What is law?" even when their familiarity with it and their ability to recognize examples are indisputable. We undoubtedly believe that this way of referring to others, whether knowledgeable or not, enabled his thought to be received by those who held, and continue to hold, different views.

For Hart (1961), Legal Theory, in seeking to answer the question "What is law?", would confront three recurring problems that can be expressed through the following questions:

a) How does law differ from orders backed by threats, and how is it related to them?
b) How does legal obligation differ from moral obligation, and how is it related to it?
c) What are rules, and to what extent is law a matter of rules? (p. 16)

For the author, the category that most obviously presents itself for use in a definition of law is:

> *the general family of rules of conduct; nevertheless, the concept of a rule […] is as perplexing as the concept of law itself, so that definitions that begin by identifying legal precepts as a species of rules*

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> *usually do little to advance our understanding of law. For this reason, something more fundamental is needed than a form of definition successfully used to locate a special, subordinate class within some general, familiar, well-understood class of things. (Hart, 1961, p. 18)*

Certainly, as Hart observes, "What is law?" is one of the most frequently repeated questions throughout the history of legal thought, since attempts have been made to define it in diverse contexts in order to find a concrete model of thought. This leads us to regard the multivocal categorization of the term itself as still relevant, although from a Hartian perspective it might be reduced to those three problems, which are explored throughout his work.

Hart concludes by saying that the purpose is not to provide a definition of law—and indeed none ever appears in his work, since he seeks only to clarify our understanding of it—in the sense of a rule by which the correctness of the word's use can be tested. The purpose is to advance legal theory, from an eminently relational perspective, by providing a more elaborate analysis of the distinctive structure of a legal system and a better understanding of the similarities and differences among law, coercion, and morality as types of social phenomena. This is an interesting thematic outline that places him within descriptive sociology (Magallón, 2004, p. 168), as an analytical philosopher and proponent of soft positivism. Although he does not affirm a necessary connection between law and morality, he did endeavor to show the existence of that connection and its importance when he stated that judges must decide hard cases. Furthermore, it is relevant to note that, for Hart, as Guajardo (2015) explains, the key to the science of jurisprudence, or law, lies in the combination of two rules, and therefore:

> *He distinguishes between two different but related types of rules. Those of the first type, which he calls basic or primary, prescribe that human beings perform or refrain from certain actions, whether they wish to or not; these rules impose duties and concern actions involving physical movement or changes. Those of the second type, which he calls secondary, establish that human beings may, by doing or saying certain things, introduce new rules of the primary type, extinguish or modify earlier rules, determine their effects in various ways, or control their operation; these rules impose public or private powers and provide for acts that lead not merely to physical movement or change, but to the creation or modification of duties or obligations. (p. 103)*

Within the Hartian doctrinal framework, rules play a defining role, since the so-called primary and secondary rules are integrated into a kind of dichotomy: the former impose duties on people, while the latter appear as rules about rules, conferring powers. Hart's ideas help elucidate the types of problems that a society would face if only primary rules were applied. Among others, these would include a lack of certainty, a lack of dynamism in the rules, and an absence of authority. He concludes that resolving these problems would require bringing into play what he calls secondary rules. For example, the first deficiency would be resolved through what he calls the rule of recognition, concerning legal validity. He concludes that the existence of a legal system requires, on the one hand, that valid rules of conduct be obeyed by every citizen and that the rules of recognition be accepted as standards to be followed by the system's officials themselves. Hence:

> *Regarding secondary rules as creators of duties or obligations, Hart asserts that where legal norms exist, human conduct becomes, in some sense, non-optional or obligatory. He cites Austin, for whom obligation relates to the probability or risk that the person under the obligation will suffer punishment*

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> *or an "evil" at the hands of others in the event of disobedience, a position Hart rejects. (Guajardo, 2015, p. 103)*

Ronald Myles Dworkin "was born on December 11, 1931, in Worcester, Massachusetts, in the United States of America, and died on February 14, 2013, in London, England, in the United Kingdom" (Flores, 2016, p. 1). In chapter 1, entitled "Jurisprudence," of his book *Taking Rights Seriously*, he wrote that, in addition to technical problems, a lawyer's work presents other problems on which there is no general agreement. These seek to determine, among other things, whether a statute is just, how law is described, how principles are defined, and what it means to apply them (Dworkin, 1989, p. 43). Some maintain, as the author notes, that these are problems to be addressed by Jurisprudence. In this regard, Dorkin (1989) also noted the lack of agreement as to whether this is important in a setting where lawyers confront technical issues by combining three skills, including:

1 Analyzing statutes and judicial opinions, extracting legal doctrine from these official sources.
2 Analyzing complex factual situations and accurately summarizing essential facts.
3 Developing tactical thinking and designing laws and legal institutions that produce social change. (p. 44)

Dworkin argued that Jurisprudence sought to reformulate problems to accommodate these skills, generating only an illusion of progress, since important legal problems were left untouched: only analytical jurisprudence was taught, rather than ethical jurisprudence, leaving aside what law ought to be (Dworkin, 1989, p. 44). For this contemporary philosopher, Dorkin (1989), "the lawyer knows facts about legal doctrine, but is unclear whether those facts contradict principle," because the doctrine of English Jurisprudence, he observes, has ignored the moral use of concepts (p. 45).

Contextualization is important for Dworkin because, for example, the Constitution of the United States of America gave legal status to subjects that in England were political in nature, such as the minimum wage, since "in England, for example, the question of whether minimum-wage legislation is just was political in nature, but in the United States it was also a constitutional, that is, a judicial, question" (Dworkin, 1989, p. 46).

Dworkin (1989) argued that the emergence of Legal Realism, which exposed orthodox doctrine, in the 1820s and 1830s, whose proponents included Jerome Frank, Karl Llewelyn, Wesley, Sturges and Morris, and Félix Cohen, maintained that traditional theory "had been mistaken because it had adopted a doctrinal approach to Jurisprudence" (p. 46). The error they identified was that judges actually decided "cases according to their own political or moral preferences, selecting an appropriate legal rule; they therefore called for a scientific approach that would establish what judges do rather than what they say" (Dworkin, 1989, p. 46).

The author notes that the doctrinal approach of English texts was successfully changed in North America by emphasizing skills such as the ability to organize facts and design tactics conducive to social change, giving rise to sociological Jurisprudence, as Roscoe Pound called it, which details the judge's response to social and personal stimuli (Dworkin, 1989, pp. 46, 47).

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Regarding the emphasis on tactical aspects, Dworkin (1989) states that "scholars such as Myres McDougal, Fuller, Hart, and Albert Sachs, among others, insisted on the importance of considering law as an instrument for guiding society toward certain important objectives, and attempted to settle questions concerning the legal process instrumentally by asking which solutions would best advance those objectives" (p. 47).

There is one subject on which we take the liberty of commenting because of its interest: the figure of the so-called Dworkinian Judge, who should not be overlooked and who, he states, does not create law, since he is a Judge Hercules, "a protector of individual rights, attentive to the principles that can be derived from the soundest explanatory and justificatory theory of law" (Prieto, 1984, p. 355).

Reading Dworkin's (1989) essay allows for discussion of countless ideas that prompt profound reflection, including observations such as:

> *the Court gives reasons; it does not cite statutes but appeals to political principles and principles of justice […] Does this mean that, after all, the Court adheres to standards, even if they are more general and abstract? […] Or does this mean that the Court decides the case according to its own moral and political beliefs? (p. 48)*

This reminds us of his fundamental theoretical departure from Hart concerning principles. Dworkin answers that what we seek to know from this is how far the justification of judicial power applicable to easy cases extends to hard cases, and how that justification affects the extent of an individual's moral and political obligation to obey judge-made law. The author is emphatic on this point, stating that "the problems of Jurisprudence are, at their core, problems of moral principle, not of legal fact or strategy […] But if Jurisprudence is to succeed, it must expose these problems and confront them as problems of moral theory" (Dworkin, 1989, p. 51).

Dworkin (1989) acknowledged Hart, his teacher, stating that "he is a moral philosopher; he has an instinct for problems and a wonderful clarity in presenting them" (p. 51). In his first book, *The Concept of Law*, Hart made clear "the question of whether judges follow standards in such a way as to clarify the connection between this problem and the moral problem of when it is right for one person to impose an obligation on another" (Dworkin, 1989, p. 51). Maintaining, moreover, that judges largely follow the same standards when reasoning about legal obligation, Dworkin also noted that Hart did not content himself with explaining law by demonstrating how the ordinary person incorporated moral judgments. In Dworkin's (1989) words, Hartian theory demonstrates "that the general purpose of law is not merely to condemn blameworthy acts, thereby proving that this cannot be the meaning of exemptions based on mental illness" (p. 54). He stated that Hart was mistaken in rejecting the theory of blameworthiness, since he confused the two reasons why a violation of the law might constitute a moral wrong:

> *it might be wrong to break a law because the act it condemns—killing, for example—is itself wrong. Or it might be wrong, even though the condemned act is not itself wrong, precisely because the law prohibits it, and railway legislation might be a case of this. (Dworkin, 1989, p. 54)*

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Regarding the implicit commitment to principle, it is important to mention that Dworkin (1989) makes clear that one should treat "a person against his will only when the danger he presents is real, and not when we calculate that crime figures would probably fall if we did so" (p. 57). He asserts that "the approach to Jurisprudence that insists on principle cannot restrict itself merely to showing the links between social and legal practice, but must continue to examine and criticize social practice by comparing it with independent standards of coherence and sense" (Dworkin, 1989, p. 58).

In considering the imprisonment of a person awaiting trial, in light of Hart's statement that government must show a minimum of respect even to those accused and treat them as human beings rather than as expendable remnants (Dworkin, 1989, p. 59), he concludes that it is unjust to imprison someone on the basis of a judgment concerning a class, however accurate that judgment may be, because the person is denied the right to be respected as an individual. Accordingly, "it is wrong to send a person awaiting trial to prison on the basis of a prediction that he might commit further crimes if released on bail" (Dworkin, 1989, p. 59).

Prieto Sanchis (1984), in a general interpretation of Dworkin's *Taking Rights Seriously*, states that throughout the book Dworkin seeks to restore a radical individualism grounded in natural law theory:

> *A human being, by the mere fact of being human, possesses basic and inalienable rights that precede any form of human will or hypothetical agreement; the legitimacy of government is founded on respect for and protection of those rights. Moreover, "taking rights seriously" means that they cannot be sacrificed to collective objectives or projects of social welfare; disobedience to laws is a corollary of the force of individual rights. (p. 356)*

When Dworkin was asked whether he was a natural law theorist (Ollero, 2015), he replied: "If every theory that holds that the content of Law sometimes depends on the correct answer to some moral question is a natural law theory, then I am guilty of natural law theory" (p. 522). He stated that positivism was a human creation without any kind of connection to morality.

Of course, some maintain that Dworkin is not a natural law theorist, because he merely recognizes the connection between law and morality, which seems evident to him in light of his interpretive legal reasoning; this does not occur in positivist theory (Vargas, 2013, p. 506).

To identify Dworkinian thought, it is of the utmost importance to keep in mind the types of norms that he says constitute law. In this regard, Romero (2017) states:

> *...he speaks of law as consisting mainly of rules, but also of principles and policies, a situation that positivist theory fails to recognize, since it concentrates on analyzing the application of legal rules, excluding the study of other norms such as those described by Dworkin. (p. 42)*

We believe that, unlike Hart's account, law for Dworkin is indeed a form of reasoning that includes categorizations of a moral nature rather than a matter of simple consensus. He considers law to consist not only of rules but also of principles, with interpretation coming into play in the face of a critique of the rule of recognition. Hence, for Dworkin, principles have a reach beyond the norms themselves, playing

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an essential role in constructing the arguments that ground judgments, while matters not resolved by the rule of recognition to which Hart refers can reach a satisfactory conclusion only through moral deliberation.

For his part, Carlos Santiago Nino was born in Buenos Aires, Argentine Republic, on November 03, 1943, and died in La Paz, Bolivia, on August 29, 1993 (Malem, 1994, p. 17). In *The Essentialist Approach to the Concept of Law*, he concludes that acknowledging several alternatives for defining law could overcome the controversy between positivists and natural law theorists, seeking to "abandon an absolutist approach to the basic notion of the conceptual framework to be reconstructed, whose singularity would make it possible to give unity to the entire system of concepts" (Nino, 1985, p. 194). In his classic work *Introduction to the Analysis of Law*, he states that "What is law?" is one of the questions that "causes the greatest unease and disorientation among jurists […] originating in adherence to a certain conception of the relationship between language and reality" (Nino, 2003, p. 11). Added to this, as he also indicates, are ambiguity, vagueness, and emotive connotations, which present major difficulties in defining it:

> *The word "law" is ambiguous, and, to make matters worse, it has the worst kind of ambiguity: not mere accidental synonymy […] but that constituted by having several meanings closely related to one another […] the expression "law" is vague. Taking ordinary usage into account, it is not possible to state properties that must be present in every case in which the word is used. (Nino, 2003, p. 14)*

Furthermore, Nino (2003) notes that "it is a word with a favorable emotive meaning" (p. 16), and that the dispute between positivism and natural law theory lies in whether the expression "law" should be assigned a descriptive or normative meaning. Positivists, although not all of them, have adopted the former, without forgetting that the separation between law and morality functions as a reference parameter, since, as Nino (2003) states:

> *a simplistic description of the substance of this controversy would say that, while natural law theory maintains that there is an intrinsic connection between law and morality, legal positivism denies such a connection. But […] there are many very different ways of maintaining that an important connection exists between law and morality. (p. 18)*

Even within the methodological positivist strand, as he described it in the dramatization of the judicial judgment presented in his own work as one "inspired by the judicial proceedings organized by the Allies, the victorious nations of the Second World War, to try Nazi leaders who had participated in various acts committed during Hitler's regime" (Nino, 2003, p. 18), it was emphasized that the judgments delivered by the judges:

> *appear to adopt different positions regarding the theses that judges must, in certain cases, resort to moral principles to justify their decisions; that judges must refuse to apply legal norms that contradict moral principles; that every legal norm, whatever its origin and content, has binding force and must be obeyed; and that identifying a legal system requires making value judgments about the justice and morality of its provisions. (Nino, 2003, p. 27)*

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Furthermore, he states that the decisive arguments in favor of a descriptive concept of law, such as that defended by positivism, are those that appeal to the need, for certain theoretically and practically significant purposes, to conceive of law as a social phenomenon that interacts with others, and to conceptually form a class comprising all normative systems that regulate the state's coercive monopoly (Nino, 2003, p. 42).

According to Mufatto (2015), if a descriptive and, where applicable, normative concept of law is employed, then it would be accepted that:

> *...legal norms can be identified on the basis of social facts—the social sources thesis—but it does not follow that judges have a duty to apply them or that citizens must comply with them. The only duty that can be derived from the descriptive concept of law is a "quotation-marked," non-genuine duty. A "quotation-marked" statement of duty does not express an operative practical reason and does not serve to guide the conduct of its addressee, but rather to describe the social facts that reflect the existence of a legal norm. On the other hand, on the basis of a normative concept of law, the assertion that a certain norm is a legal norm would imply the assertion that judges have a duty to apply it, while citizens have a duty to conform to it. To speak of a normative concept of law implies assimilating it to ethical concepts such as good, right, or just. As a normative notion, the concept of law, which refers to the standards that ought to be recognized, cannot be applied without an evaluative conception that assigns it a certain content. (pp. 1149 and 1150)*

Santiago Nino defends the idea that law cannot be interpreted without recourse to morality, because it depends on morality, and that there is a diversity of perspectives on law requiring different systems of concepts.

The most relevant information concerning the thought of the three authors is presented below.

Table 1. Compiled using data obtained from the authors cited in the references of this research.

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Year	Author	Main contribution	Connection with Contemporary Legal Theory
1961	H. L. A. Hart *The Concept of Law*	Distinguishes primary and secondary rules; considers it necessary to speak of a rule of recognition. The existence of a legal system entails the attitudes and conduct involved in the voluntary acceptance of rules, as well as the simpler attitudes and conduct involved in mere obedience or acquiescence. Hence, a society in which law exists comprises those who view its rules from the internal point of view as accepted standards or criteria of conduct, and not merely as reliable predictions of what officials will do to them if they disobey. But it also comprises those on whom these legal standards must be imposed by force or threats of force, either because they are wrongdoers or because they are merely defenseless victims of the system. They are interested in the rules simply as sources of possible punishment.	Addresses the construction of positivism and creates the framework for discussing the identification of law through its understanding.
1977	Ronald Dworkin. *Taking Rights Seriously*	Maintains that the truth of legal propositions consists in facts referring to the rules adopted by specific social institutions, and nothing more. A general theory of law must be both conceptual and normative. Its normative part must encompass a variety of subjects. It must contain a theory of legislation, adjudication, and obedience to law. Maintains that individual rights prevail over collective objectives when there is a conflict of principles. Considers controlling and limiting government action to be one of the legal system's principal objectives. Addresses the right to equal concern and respect.	A genuine theory of rights must give priority to rights over social objectives. Social objectives are legitimate only if they respect individuals' rights. Law is nothing more than a device whose purpose is to guarantee individuals' rights against infringements by the majority and the government. The best theory of law will be able to reduce uncertainty and insecurity by justifying objective criteria through the model of the right answer, in which the Judge lacks discretion and therefore political power, preventing the Judge from becoming a legislator.
1973–2003	Carlos Santiago Nino *Introduction to the Analysis of Law*	The difficulties in defining "law" faced by some jurists and people in general originate in adherence to a certain conception of the relationship between language and reality, which prevents a clear understanding of the assumptions, techniques, and consequences that must be taken into account when defining a linguistic expression—in this case, "law."	The old controversy between natural law theory and legal positivism revolves around the relationship between law and morality. A simplistic description of the substance of this controversy would say that, while natural law theory maintains that there is an intrinsic connection between law and morality, legal positivism denies such a connection. He notes that there are many very different ways of maintaining that an important connection exists between law and morality. Anticipates a deliberative legal theory centered on the protection of rights and legal guarantees.

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Contemporary Legal Theory: A Look toward the Future

From the plurality of ideas about what law is, within an ontological description, these three authors were selected because their work provided the doctrinal foundation that most closely answers what law is, what law is like, what it exists for, why it exists, and why law ought to exist. Discussing Hart, Dworkin, and Nino introduces us to the clarification of law's institutional existence, its interpretation in accordance with norms and principles, and its deliberative democratic legitimation.

A future-oriented perspective leads us to consider a new reality in which artificial intelligence, data, and neurotechnology, among other things, emerge in a setting that must be sustained by unrestricted respect for human rights, legality, and transparency within a constitutional and democratic state governed by the rule of law. It is therefore essential to reconnect law with justice, virtue, and general welfare, without forgetting that democracy, according to Art. 3 of the Political Constitution, section II, subsection a), is considered "not only as a legal structure and political regime, but also as a system of life founded on the constant economic, social, and cultural improvement of the people."

The normative ecosystem must strengthen current frameworks by considering new settings in which a new socio-legal paradigm converges, involving multidisciplinary subjects whose complexity must be examined through the diverse bodies of scientific knowledge. Subjects such as artificial intelligence, data, and neurotechnologies require normative regulation, but in light of disciplines such as neuroscience, among others.

Constructing and strengthening Legal Theory through disciplines concerned with the study of the brain reorganizes the actors on the playing field of legal science. It is not merely a matter of placing conduct at the center, but of examining where it originates and why. Identifying the cause of the efficient cause, to which Thomas Aquinas referred, in order to recognize its genesis and understand the evolution and transformation of our object of study.

The transformation of Legal Theory responds to new contexts that epistemically entail a new model of reality.

To discuss law entails an urgent and necessary return to the ontological description of the human being, human conduct, and the biological engine in which cognitive capacity develops.

The behavioral universe, viewed from within and regulated through the norm, where science knows and recognizes the importance of the human brain.

Discussing artificial intelligence, data, and neurotechnologies within a Legal Theory that opens the way to repositioning human dignity as a priority under the Rule of Law.

Considering, in the protection and safeguarding of human rights, the broadest protection of the person in every respect provided for in law and international treaties, protecting their status as a human being, person, and individual.

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Seeking to answer the question "What is law?" must take into account the protection of human beings' fundamental rights, both in their individual condition and in their relational condition, in all areas of their lives, such as family, social, and working life. Law must therefore seek to respond to new demands, such as restoration to a prior condition, preceding harm caused by artificial intelligence through automated decisions, data dissemination, or erroneous neurotechnological interventions. Seeking to answer what law is in a setting where artificial intelligence, data, algorithms, platforms, and neurotechnologies converge and undoubtedly produce legal effects that may eventually condition human recognition and participation leads to a reformulation of the question.

Reasons to Rethink Law

Living in a new digital era, in which human life is interwoven with technologies that direct decision-making and responses in areas that are not only personal but also social, cultural, and occupational, encourages us to examine frameworks for protecting rights that include this digital universe. The aim is to bring the so-called Dworkinian trump cards to the analytical table in the face of measures directed toward optimizing a nation's security in pursuit of general welfare, so as to place human dignity in a position of priority, protecting the ontological essence of the human being against the changes of a new Industrial Revolution. This revolution has been developing not only outwardly in individuals' lives but also within their very being, where technology blends with human biology.

Making the use and application of neurotechnologies transparent in order to safeguard human cognitive function in a bidirectional condition. Abandoning the idea that artificial intelligence, or superintelligence, as some already call it, could become the Dworkinian Judge Hercules, given the absence of reasoning without moral judgment and ethical evaluation.

Making Nino's deliberative democracy effective in its epistemic assessment, seeking to resolve problems through morally correct solutions, and strengthening the state's own public morality by constructing laws that continue to consider people's human nature above algorithmic optimization and their existence as a mere datum in the world of statistics.

Conclusions

Contemporary Legal Theory has accounted for diverse models of thought that have moved, among many others, from hard positivism, which excludes every moral criterion from its genetic identity, through so-called soft positivism, which allows the incorporation of principles of political morality into law itself, as occurs in the Anglo-American legal system, to traverse the terrain of those who connect law with principles, rules, and policies, whom some call natural law theorists and others principlists. What is certain is that, like a domino effect, they have sought to obtain the key that allows an answer to the question that seems impossible to stop contemplating: What is law? How much progress has been made since Hart noted the persistence of this question in one of his works? Perhaps enough to make us reconsider our position in a world that needs answers to what some have believed might help us live as more fully human beings.

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We believe that Hart is an admirable philosopher because of the breadth of topics he incorporated into his works. As the teacher of many great legal philosophers, including Dworkin, he was interested not only in constructing a legal theory but also in inspiring his disciples with the desire to find answers—often differing from his own—that could shake human beings to their core while strengthening their true nature.

The depth of Dworkin's thought calls for critical reflection, because hope converges within it when he states that "law includes not only the specific rules enacted in accordance with the practices adopted by the community, but also the principles that provide those rules with the best moral justification." We speak of hope because this may allow us to resolve the differences that are still being debated today concerning what is truly valuable.

In Santiago Nino, we find an instrument of mediation between positivism and natural law theory, in his effort to dissolve the controversy generated between these two currents of thought. He came to state that this controversy arose from a mere conceptual confusion, grounded in the belief that there is only one possible definition of law, noting that what is truly fundamental in the relationship between law and morality is the justification and interpretation of law itself.

Future Lines of Research

The emergence of a new reality requires us to examine subjects as important as artificial intelligence, data, and neurotechnology. In this new setting, the position of Legal Theory continues to be constructed in a dichotomous condition: on the one hand, it includes subjects addressing, among other things, human rights, human dignity, virtue, justice, democracy, and the democratic constitutional state governed by the rule of law; on the other, it concerns the existence of risks in a setting where the impact of AI, data, and neurotechnologies transcends the individual sphere and extends into the relational sphere. This consequently requires extending the protection of the person, seeking to restore the condition preceding the harm, should that harm materialize, not only in the real world but also in an algorithmic ecosystem, where it would be desirable to avoid perpetuating relational harm. Many AI systems do not allow their effects to be fully reversed, and deleting a datum does not erase the record, potentially causing stigmatization, the rupture of personal ties, and social exclusion. Rethinking what law is requires reflection on the existential justification of the human being, the human family, and its teleology; rethinking law means turning toward a world that is real but also virtual, a reality that implicates cognitive functions as part of the technological evolution of the twenty-first century.

References

Dworkin Ronald, (1989). "Los Derechos en Serio", Editorial Ariel S.A., Barcelona. https://img.lpderecho.pe/wp-content/uploads/2017/09/Descargue-en-PDF-Los-Derechos-en-serio-de-Ronal-Dworkin-Legis.pe_.pdf?fbclid=IwY2xjawU9HU1leHRuA2FlbQIxMABwZG9mAWJyaWQRMTVRWUJ3TjFBTEN6Q0JWbkJzcnRjBmFwcF9pZBAyMjIwMzkxNzg4MjAwODkyAAEew9C5WtzcNdxUGEP6zxVTVcWm4d_4deoJ_53CUE4tIYFPtzZ7kYxslJJ_nBs_aem_FHngD3ZBWkCbr4ckDXLDFA

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Hart Herbert L.A., (1961). "El Concepto del Derecho". Traducción de Genaro Carrió R., Abeledo-Perrot, Buenos Aires, Argentina. https://www.academia.edu/6574051/28490884-El-Concepto-de-Derecho-Herbert-Hart

Flores Mendoza, Imer B., (2016). "Ronald Dworkin (1931-2913) vida y obra ", UNAM, https://archivos.juridicas.unam.mx/www/bjv/libros/10/4658/2.pdf

Guajardo Harboe, María C., (2015). "El Concepto del Derecho de H.L.A. Hart y la Indemnización del Daño Moral en Chile", *Revista Chilena de Derecho del Trabajo y de la Seguridad Social*, vol. 6, núm. 12 pp. 102-113. https://revistaestudiosarabes.uchile.cl/index.php/RDTSS/article/view/38450/41705

Henao Villa, César Felipe, et.al., (2017). "Multidisciplinariedad, interdisciplinariedad y transdisciplinariedad en la formación para la investigación en ingeniería," *Revista Lasallista de Investigación* 14, núm. 1, pp. 179-197, Redalyc. *https://www.redalyc.org/articulo.oa?id=69551301017*

Hernán G. Bouvier, (2011). Lenguaje y Teoría del Derecho, Tensiones en una variante del Realismo Jurídico, *ISONOMIA,* núm. 35. *http://www.archivo.isonomia.itam.mx/docs/isonomia35/Isono_352.pdf*

León Molina, Jorge E., (2008). "Tres Modelos de Pedagogía Jurídica, Superación del positivismo jurídico en el aula o una enseñanza integral del derecho", *JUS Filosofía 2 Teoría Jurídica y Enseñanza del Derecho*. *https://repository.ucatolica.edu.co/bitstream/10983/18965/1/Teoria-juridica-y-ensenanza-del-derecho_Cap02.pdf*

López Moreno, Ángeles, (1990). "El Lugar de la Moderna Teoría Jurídica", *Anuario de Filosofía del Derecho*, núm. 7, pp. 281-290. *https://dialnet.unirioja.es/servlet/articulo?codigo=142173*

Magallón Ibarra, Jorge M., (2004). "Los Sonidos y el Silencio de la Jurisprudencia Mexicana", IIJ, UNAM, Serie Doctrina Jurídica núm., 190. https://archivos.juridicas.unam.mx/www/bjv/libros/3/1405/7.pdf

Malem Seña, J. F. (1994). *In memoriam: Carlos Santiago Niño. Apuntes bio-bibliográficos*. *Derechos y Libertades. Revista del Instituto Bartolomé de las Casas*, *volumen*(número), 17–31. https://e-archivo.uc3m.es/rest/api/core/bitstreams/0d2f597c-8936-4430-8ca8-203e3f67dd2a/content

Mora Sifuentes, Francisco M., (2017). "Biografía Mínima de H.L.A. Hart", *Revista Venezolana de Legislación y Jurisprudencia*, núm. 9. https://www.researchgate.net/publication/320812803_Biografia_Minima_de_HLA_Hart

Muffato Nicola, (2015). "Normatividad del Derecho capítulo 31", *Enciclopedia de Filosofía y Teoría del Derecho*, vol. 2 pp. 1147-1175, IIJ, UNAM. https://archivos.juridicas.unam.mx/www/bjv/libros/8/3796/11.pdf

Ollero Andrés, "¿Soy en realidad iusnaturalista? Filosofía del derecho", Universidad Rey Juan Carlos, Madrid, España. http://www.tribunalconstitucional.es/es/tribunal/Composicion-Organizacion/documentos-magistrados/OlleroTassara/Colaboraciones/331-DN-MTZ%20ROLDAN.pdf

Prieto Sanchis, Luis, (1984). "Teoría del Derecho y Filosofía Política. Comentario al libro de Ronald Dworkin Los Derechos en Serio", Traducción de Martha Guastavino, Editorial Ariel, Barcelona.

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https://webcache.googleusercontent.com/search?q=cache:KpCqC5HgcwoJ:https://dialnet.unirioja.es/descarga/articulo/241940.pdf+&cd=4&hl=es&ct=clnk&gl=mx

Romero Martínez, Juan M., (2017). "Estudios sobre la Argumentación Jurídica Principialista, Bases para la Toma de Decisiones", IIJ, UNAM, Serie Doctrina Jurídica, núm. 720. http://bilio.juridicas.unam.mx/libros/libro.htm?l=3966

Nino Carlos S., (2003). "Introducción al Análisis del Derecho, Colección Mayor Filosofía y Derecho", 2ª edición, Editorial Atrea. https://inecipcba.files.wordpress.com/2013/08/introduccion_al_analisis_del_derecho_-_carlos_santiago_nino.pdf

_____ (1985), "El enfoque esencialista del concepto de derecho" en La validez del derecho, Buenos Aires, Astrea, pp.175-196.

Vargas del Carpio, Ana M., (2013). "Ronald Dworkin, Justice for Hedgehogs", Cambridge, Mass., Harvard University Press, *Dikaion Revista de Fundamentación Jurídica*, vol. 26, núm. 2, Universidad de la Sabana, 2017. https://www.redalyc.org/jatsRepo/720/72055554006/html/index.html