Chapter 5

A Critical Analysis of Hart's Philosophical Perspective on International Criminal Law

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Abstract

This article examines the philosophical principles of international criminal law from a natural law perspective. In general, the natural law approach argues that law should be based on universal principles of justice, while positivist views reduce law to objective norms. By emphasizing the differences and conflicts between these two philosophical approaches, this article addresses the controversial aspects of international criminal law's conception of justice and the nature of legal norms based on the positivist ideas of H.L.A. Hart. However, while criticizing H.L.A. Hart's positivist conception of law, the contribution of the natural law perspective to the shaping of international criminal law is addressed. This article emphasizes the importance of evaluating international criminal law from a natural law perspective in addition to positivist law and provides a critical foundation for the continuity of law that should be continued in future research.

Introduction

International Criminal Law is a complex area of law created to combat various crimes around the world and to ensure the security of the international community (Stahn, 2019; Tallgren& Skouteris, 2019; Schwöbel & Taylor & Francis, 2014). The first work written in this field was Georg Schwarzenberger's famous article on "The Problem of International Criminal Law", four years after the Nuremberg verdict (Schwarzenberger, 1950: 263–296). He questioned whether global criminal law could exist. "When . . . such as proposals for the development of an international criminal law, it is advisable to pause and reflect on its meaning and value, without following in the footsteps of the enthusiastic advocates of such an idea"(Schwarzenberger, 1950: 263'den akt. Stahn, 2019: 1). It seems that

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understanding the philosophical foundations of law in this field is important not only for the practice of law but also for understanding the nature and functioning of law. International criminal law has become increasingly important in the modern era for the following reasons: With globalization, international crimes and threats have increased. The importance of international cooperation and coordination, such as terrorism, human trafficking, organized crime and cybercrime, has increased to combat crimes with global reach (Munice, 2005: 35-64). International criminal law is crucial for providing a legal framework for the international community to address such crimes (Carlson, 2022: 123-144).

For these reasons, international criminal law is an important branch of law that focuses on the protection of human rights and the punishment of violations. War crimes, genocide, crimes against humanity and other serious human rights violations are addressed and prosecuted under international criminal law (Oguna&Okafor, 2019: 19-29; See. Law Library of Congress, 2016). The international community is increasingly demanding justice and accountability for those who commit crimes. It is a piece of public international law designed to prohibit certain types of conduct that are generally considered serious cruelty and to make perpetrators of such conduct criminally liable for the crimes they commit.

The purpose of international criminal law is therefore to ensure that perpetrators are brought to justice and that the rights of victims are protected and to ensure effectiveness in combating international crimes (Glasius, 2009: 496-520). International courts and penal mechanisms therefore play an important role in prosecuting and punishing international crimes. International criminal law is used as a tool for maintaining peace and security. By combating war crimes, aggression and other international crimes, the stability and security of the international community are maintained (Romano, 2020: 149-163). All these reasons are the main factors that make international criminal law increasingly important in the modern era. Its effective functioning helps the international community uphold fundamental values such as justice, security and respect for human rights (Van den Herik&Letnar, 2010: 725-743).

1. International Relations, International Law Theory

1.1. Hart's Normative Legal Theory and Positivist Understanding of Law

H.L.A. Hart's normative theory of law provides an important framework for understanding the nature and functioning of law. In this section, we will

examine Hart's key concepts and how he defines legal norms and discuss how this theory can be applied in the context of international criminal law. H.L.A. Hart is a leading proponent of the positivist conception of law, focusing on objective norms to define law. In this section, we will discuss the main principles of Hart's positivist approach and focus on how these principles can be applied in the context of international criminal law.

H.L.A. Hart wrote many important works on the philosophy of law and the nature of law. The most well-known of these are *The Concept of Law*: Hart's most famous work; this book was published in 1961. It offers an in-depth analysis of the nature of law and the concept of law. In this work, Hart addresses issues such as the content of law, its normative structure and the sovereignty of law. It is also a study of Hart's thoughts on international law and his views on the nature of international law. Hart provides an in-depth analysis of the content, applicability and effects of international law. *Punishment and Responsibility*: This is Hart's major work on criminal law and punishment. It examines the basic principles of criminal law and the ethical and practical aspects of punishment. *Law, Liberty and Morality*: This is a collection of Hart's essays on the relationship between the nature of law, the concept of liberty and moral values. The book is considered an important source in the field of philosophy of law. *Essays in Jurisprudence and Philosophy*: This book contains Hart's various essays on jurisprudence and philosophy. The book addresses the nature of law, the source of law, the normative structure of law and other fundamental issues. These works contain H.L.A. Hart's important contributions to the philosophy of law and the nature of law and have an important place in the field of philosophy of law (URL-1.Encyclopedia of Philosophy, 2024).

Hart tries to understand the nature of law by using linguistic theories in his analysis of the concept of law. According to his approach, language plays a central role in understanding the basic structure of law. Linguistic analysis is important for understanding the variability of laws. According to Hart, the evolution and change of language leads to a change of law. Therefore, linguistic analysis of law is important for understanding how law changes and adapts. When we look at Hart's use of linguistic theories in the analysis of the concept of law, first, Hart starts by understanding the meaning and function of law and the meaning of the terms and expressions it contains (Zeifert, 2022: 409-430). Linguistic analysis serves to understand the meaning of law by analysing the texts and expressions of law. In particular, the study of legal terms, expressions and the language used by the law is important for understanding how the law functions. Linguistic theories play an important role in the process of interpreting and understanding laws.

Hart therefore interprets laws using linguistic principles to determine their meaning. This helps to determine how to apply the law and how to interpret laws. These theories are used to understand the social and cultural context of law (Doliwa, 2016: 231-254). When studying the language and expressions of law, Hart takes into account the influences of society and culture. This helps to understand how law functions in a given society and how it is perceived. In this respect, linguistic analysis is an important tool used to understand the structure, functioning and change of law.

In fact, Hart developed his own system of thought by criticizing the theory of John Austin, who proposed the theory of the sovereignty of law and strengthened the positivist view of law. First, to indicate the differences in approach, according to Austin, law originates from the commands of sovereignty. However, Hart argues that this approach simplifies law and fails to fully explain the nature of law. According to him, law is influenced not only by the commands of the sovereign but also by the norms and practices of society. Moreover, according to Austin, law consists only of the commands of the legislature and the conformity of practice to those commands (Hart, 1961: 205-211). However, Hart argues that this approach is inadequate and does not take into account the complexity of the process of interpretation and application of law in practice (Hart, 1983: 244, 246, 288). According to him, the application of law is based not only on the dictates of the law but also on the inherent norms of law and social practices. According to Hart, Austin's theory treats law as a static construct and does not take into account the changing nature of law (Hart, 1968). However, Hart argued that law is an ever-changing construct and is influenced by social, cultural and historical factors. According to him, the dynamic nature of law cannot be explained by a theory based solely on the commands of the sovereign. These criticisms reflect Hart's fundamental objections to Austin's "theory of the sovereignty of law". While Hart maintains a positivist view of law, he takes a more comprehensive approach to Austin's theory and emphasizes the complex and dynamic nature of law (See. Moles, 1985).

Hart's adoption of the positivist approach in the distinction between natural law and positivist law can be revealed through his criticisms of the natural law perspective. According to the positivist perspective, he argues that law is based on established norms and has an objective structure. Accordingly, the natural law perspective's approach based on universal principles of justice may render law uncertain and subjective. According to Hart, the fact that law has a determined and defined structure ensures its reliability and stability (Morrison, 1995: 371-402). Therefore, while he argues that law is derived from commandments and laws, he disapproves

of the natural law perspective's approach based on universal principles of justice, which shows that law is directly derived from human nature and universal principles. According to Hart, the source of law is only laws, and there is no universal source of justice other than legal norms (Hart, 1961: 185-193; See. Gomez, 2014: 45-53). While Hart argues that law should be concrete and applicable, the natural law perspective's approach based on universal principles of justice portrays law as abstract and based on general principles. According to Hart, the fact that law is based on established norms is important in terms of its applicability to concrete cases and that law should have concrete consequences (Orrego, 2004: 287-302).

Hart sees the concept of social rules as an important concept for understanding the basic structure of law (Hart, 1961: 176). According to him, social rules are norms that regulate the behavior of individuals and are accepted in society. According to Hart, social rules regulate the behavior of individuals. These rules function as norms that are accepted and expected to be followed in society. For example, legal rules such as traffic rules or trade laws are examples of social rules that regulate the behavior of individuals. Hart states that social rules are accepted and practiced in society. These rules form the normative structure of society and determine the behavior of individuals (Pettit, 2019: 229-258). For example, social rules, such as contracting or marriage, involve certain forms of behavior that society accepts and enforces. Hart emphasized that social rules have regulatory power (Hart, 1961: 26). They maintain norms in society and ensure that violators are dealt with. Law functions as a formal expression of these social rules and ensures the order of society. According to Hart, social rules can change over time and adapt to the needs of society(Hart, 1961: 92-93,131; See. Bridigo, 2010). The flexibility of these rules shows that law also has a variable structure and adapts to social change. Hart's concept of social rules emphasizes that law is a social and normative structure. This concept is used to understand how law functions in a social context and to explain the basic structure of law (Lefkowitz, 2020: 20-39).

1.2. Hart's Classification of First and Second Rules

This is an important classification used to explain the content and functioning of law. The main lines of this classification are formed by the distinction between the first and second rules.

Primary Rules: Primary Rules are rules that directly regulate the behavior of individuals and prohibit or approve certain actions. These rules form the normative structure of society and regulate the mutual relations of

individuals. For example, primary rules, such as the prohibition of murder or the protection of property rights, are basic legal rules that directly affect the behavior of individuals (Hart, 1961: 79).

Secondary Rules: Secondary Rules are the rules that create and implement the first rules. These rules regulate the formation, interpretation and application of the first rules. Secondary rules explain how law works and how law is shaped in a particular society. For example, the second rules, such as the legislative process, judicial procedures or the interpretation of laws, enable and regulate the functioning of the first rules. This classification is an important framework Hart used to understand the basic structure of law. While the first rules represent the basic norms that regulate the behavior of individuals, the second rules regulate the formation and enforcement of these rules. This provides a better understanding of how law works and how it is effective in society (Hart, 1961:82-91; Howarth&Stark, 2018: 61-81).

There are three main types of rules for Hart's second set of rules: recognition, modification and jurisdictional rules.

1- Rules of Recognition: Rules of recognition are the rules necessary for the recognition and acceptance of the rules of law that apply in a society. These rules determine which norms are recognized as part of the law (Hart, 1961: 95-98,105; Green, 2021: 1613-34). Recognition rules define the basic norms that make up the legal system and distinguish them from other norms. For example, the constitution of a country or the decisions of its legislature are examples of the rules of recognition in that society (Campos, 2022: 95-116).

2. Rules of Change: Rules of change are the rules necessary to change or reorganize existing rules of law. These rules enable new laws to be adopted or existing laws to be amended in accordance with the changing needs of the law. Amendment rules regulate the process by which law continually evolves and adapts. For example, the procedures governing how to amend a law or the rules governing how to revise a constitution are examples of amendment rules (Hart, 1961: 214).

3. Rules of Adjudication: Rules of jurisdiction are rules governing how law is interpreted, applied and disputes resolved. These rules empower the judicial branches of the law and authorize them to address specific cases. Jurisdictional rules determine how the law operates and is applied (Hart, 1961: 97; Endicott, 2007: 311-326). For example, rules that determine which cases a court has jurisdiction over and on what legal standards it will make decisions are examples of jurisdictional rules. These three types of

secondary rules regulate the functioning of the law and are the basic building blocks of the legal system. While the first rules regulate the behavior of individuals, the second rules regulate the formation, change and enforcement of these first rules.

3. Method

The article employs a philosophical-critical analysis approach. It primarily examines H.L.A. Hart's positivist legal theory in relation to international criminal law, contrasting it with natural law perspectives. By critically assessing Hart's linguistic and normative frameworks, the method involves a detailed exploration of how legal norms and social rules are structured and function within both domestic and international contexts. This philosophical method relies on the comparison of legal positivism with natural law theories, focusing on the justice and moral aspects of international criminal law, particularly through Hart's critique of natural law and his emphasis on the objective structure of legal systems. The analysis is conceptual, using textual interpretation of Hart's works and comparing his theories with contemporary issues in international criminal law, emphasizing the role of norms, responsibility, and legal evolution in addressing international crimes.

4. Legal Norms And Responsibility In International Criminal Law

In international criminal law, the concepts of legal norms and responsibility are of central importance. In this chapter, we will examine Hart's approach to legal norms and how responsibility is determined while analysing in depth how international criminal law operationalizes these concepts.

Hart's understanding of international law basically reflects an approach similar to domestic legal systems but also takes into account the specific nature of international relations (Hart, 1961: 213-227). According to Hart, international law also has first rules. These rules regulate the behavior of members of the international community and constitute certain norms. The first rules of international law contain norms that regulate relations between sovereign states and the functioning of international organizations. Hart's classification of second rules also applies to understanding the functioning of international law. The rules of recognition, amendment and jurisdiction regulate the formation, change and application of international law. For example, how international treaties are recognized and interpreted are examples of the rules of recognition and jurisdiction of international law (Ha Alvarez, 2011: 681-712). Hart's understanding of international law is generally state-centered. International law focuses on relations between sovereign states and determines their rights, obligations and

responsibilities. This approach focuses on the relations of the international community between sovereign states and places less emphasis on the role of international organizations and other actors. In the process of interpreting and applying international law, Hart's second rules are important. The rules of recognition, modification and jurisdiction of international law determine how international law is interpreted, applied and modified. This process enables international law to evolve and adapt. Hart's conception is fundamentally similar to that of domestic legal systems but is shaped by taking into account the specific circumstances of international relations. This approach provides an important framework for understanding the functioning and evolution of international law (Priel, 2008: 404-411).

In order not to classify international law as a form of morality, there are several principles, such as that states should refer to precedents, treaties and legal writings in their arguments against other states that they consider to have violated the rules of international law; they should generally not talk about moral right or wrong, good or bad (See. Kramer&Hatzistavrou, 2008). States sometimes rely on moral arguments when condemning the behavior of other states, but this also occurs in cases of violations of municipal law (Kaczorowska; 2024: 124-160). Many rules of international law are also morally indifferent, such as the customs that govern the functioning of inter-State relations. The typical function of law is to introduce detailed distinctions, formalities and procedures to "maximize certainty and predictability and to facilitate the substantiation or assessment of claims" (Hart, 1961: 232). This 'formalism' or 'proceduralism' is also found in international law and distinguishes it from 'morality' (Hart, 1961: 138; Murphy, 2013: 419-434). Nevertheless, this approach does not mean that all rules of international law must be morally neutral and formal in character.

According to Hart, just as moral rules cannot be changed by any legislature, the absence of an international legislature that can change the rules of international law by applying certain procedures is "a defect that will one day be repaired"(Hart, 1961: 227, 230). States may abide by the rules of international law on the basis of moral considerations. However, the foundation of international law lies in widespread adherence to its rules, which may be motivated by calculations of long-term self-interest or a desire to maintain a tradition or a disinterested concern for others rather than a sense of moral obligation. Hart's conclusion is that because international law lacks a legislature, courts with compulsory jurisdiction, and formally organized sanctions, it resembles "a simple regime of primary or customary law" in form, if not in content (Hund, 1998: 420-433).

Though, it is similar in content to developed municipal law, making it possible for jurists to move freely from one to the other. Nevertheless, it is well known that those who embark on this task face enormous difficulties in formulating the 'basic norm' of international law. This is where the principle of pacta sunt servanda comes into play (Hart, 1961: 233; See. Binder, 2013). Bentham concluded that in his time, international law was "sufficiently analogous" to municipal law to be called 'law' (Hart, ibid.; Dakyns, 1935:44-50). Hart developed this conclusion by stating that the analogy is a content analogy, not a formal one; second, in this content analogy, no other social rule is as close to municipal law as international law.

4.1. Justice and International Criminal Law

Justice is one of the cornerstones of international criminal law, and Hart's approach plays an important role in understanding the concept of justice. In this section, we will discuss Hart's conception of justice and discuss how international criminal law ensures justice.

According to Hart, the problem with international law is not that the laws are morally bad but rather that there is no international legislation, no courts with compulsory jurisdiction, and no centrally organized sanctions (Hart, 1961: 4-32; Lee, 2022: 1-16). International law lacks secondary rules such as rules of recognition, modification and adjudication and therefore cannot be categorized as a developed legal system. However, as Hart underlines, the unity of primary and secondary rules should not be considered a necessary (or sufficient) condition for a legal system to be classified as a 'legal system'. According to him, it is more important to ask whether the use of 'international law' precludes any practical or theoretical purpose. For Hart, the issue is not about the correct use of words. It is unclear whether a general term can be applied to a set of international norms despite serious doubts about the sources of international law and states as subjects.

According to Hart's theory, the connection between law and moral standards and principles of justice is less arbitrary and 'necessary' than the connection between law and sanctions. Therefore, he leaves the question of whether this necessity has a logical structure for philosophers (Hart, 1983: 21-49).

An important part of the argument for categorizing international law as law is to show that 'automatic limitation' theories fail (Hart, 1961: 66). These theories attempt to reconcile the sovereignty of states with the existence of binding rules of international law by treating all international obligations as self-imposed obligations, such as obligations arising from a

promise. Such theories are in fact the international law equivalent of the social contract theories of political science (Hart, 1961: 71; Congleton, 2020: 101891). Hart's point is that states are bound by international law obligations as members of the international community, not by decision. However, he fails to explain how it is known that states are bound only by self-imposed obligations. Hart also indicates the basic rule that must exist that a State that assumes certain obligations is obliged to do everything it undertakes to do in appropriate words. A State may promise to perform a particular act, but for that promise to become an obligation, there must be a rule that promises to create obligations. This rule is binding irrespective of the choice of the party bound by it.

Hart's third argument refers to specific facts, such as the existence of a new state. According to Hart, "when a new, independent state emerges, [...] there has never been any doubt that it is bound by the general obligations of international law, inter alia the rules that make treaties binding" (Hart, 1961: 50, 226; Linderfalk, 2007: xxiiii). Additionally, it is true that international law resembles regimes containing only primary rules, even though its rules are very different from those of primitive societies. Many of its concepts, methods and techniques are the same as those of modern municipal law. There is an argument that international law must be a kind of 'morality' because it contains no secondary rules. According to Hart, this view is mistaken and is often associated with the "old dogmatism" arising from Austin's concept of law as "commands backed by threats"(Kropanev, 2021: 6-10; See.Wetlaufer, 1997). While it would be possible to interpret a concept of morality as referring to all systems of rules that are not backed by threats, this would not serve any practical or theoretical purpose (Hart, 1961, 175-180).

Hart criticizes the revival of natural law theory because it emphasizes an ideal form of law based on self-evident objective values. He disagrees with this philosophy and argues that it could lead to confusion between what law should ideally be (according to moral principles) and what it actually is. Essentially, he is concerned that by prioritizing morally good laws as the standard, it blurs the line between law and the criteria used to judge it (Hart, 1983, 49-88).

The natural law perspective argues that human rights are universal and unalterable. Accordingly, international criminal law can be used as a tool to protect human rights and punish violations. For example, the International Criminal Court (ICC) was established to prosecute those responsible for human rights violations and is guided by natural law principles (Pastor, 2023:

381-406; See. Helmholz, 2015). The natural law perspective prioritizes the punishment of serious human rights violations, such as war crimes and genocide. It creates international courts and penal mechanisms to try and punish such crimes. For example, in the 1994 Rwandan Genocide, the International Criminal Court tried those responsible for genocide in Rwanda (Hola&Nyseth, 2016:59-80). The natural law perspective emphasizes the importance of universal justice and accountability for those who commit crimes. Accordingly, international criminal law promotes the ideal of a just society by ensuring that everyone is equally accountable before the law (Sadat, 2009: 543-562). For example, the ICC aims to ensure international justice by effectively prosecuting those who commit crimes. These examples illustrate how the natural law perspective plays an important role in shaping international criminal law and contributing to the international community acting in line with universal principles of justice.

His observations on how international law can become a developed legal system may have even greater relevance for contemporary debates. True to his descriptive approach, he does not argue that international law should be a developed legal system. He does, however, indicate how it could be, and an unspoken aspiration in this direction is perhaps palpable. In his view, it is true that important relations between states are regulated by multilateral treaties, and it is sometimes claimed that these treaties can be binding on other states that are not parties (Vidigal, 2013: 1027-1053). If this were generally accepted, such treaties would in fact be legislative acts and would have different validity criteria for rules of international law (Hart, 1983: 319-324). In this case, a basic rule of recognition could be formulated that would represent a real feature of the system and would be more than an empty statement that a set of rules is actually observed by States. Perhaps international law is now in a transitional phase towards the adoption of this and other forms that would bring it structurally closer to a municipal legal system (Hart, 1983: 324-334).

4.2. The Evolution and Future of International Criminal Law

International criminal law has undergone significant changes over time and will continue to do so in the future. In this section, we will discuss the historical development of international criminal law and the role of Hart's approach in this evolutionary process (Dyevre, 2014: 364-386).

It is worth noting that since Hart wrote ideas in the early 1960s, international law has indeed developed in directions that could advance the transition. International courts with binding jurisdiction over a subset of

states, such as the European Court of Human Rights, the ad hoc tribunals for Rwanda and the former Yugoslavia, and the ICC, have been established (Schomburg, 2009: 3-9). Some of these jurisdictions have been imposed on a group of states by resolutions of the United Nations Security Council, while others exist on the basis of state self-imposition. The ICC is a hybrid in that it can exercise jurisdiction over nationals of non-States Parties who commit ICC crimes within its jurisdiction on the territory of States Parties (McGonigle, 2014: 785). The existence of such courts leads to judicial decisions determining which rules based on treaty or customary law can be binding on all states, regardless of their treaty obligations (Ali&Ben, 2022: 23-47). However, there seems to be a long way to go before States reach a consensus on so-called jus cogen norms. According to the legal literature, international crimes qualify as jus cogens: aggression, genocide, crimes against humanity, war crimes, piracy, slavery, slavery-related practices and torture (Bassiouni, 1996: 63-74). The legal basis for this claim consists of the following: International declarations recognizing these crimes as part of general customary law. Statements in the preambles or other provisions of treaties indicating that these crimes have a higher status in international law (See. Staubach, 2018). A large number of states have ratified treaties on these crimes. International investigations and prosecutions of perpetrators of these crimes. Other arguments for the inclusion of certain crimes in the category of jus cogens are that they affect the interests of the world community as a whole because they threaten the peace and security of mankind and shock the conscience of humanity (Heijer&Van der Wilt, 2016: 51-84).

In the ICL in the 1990s, it was still unclear whether the inclusion of a crime in the category of jus cogens created rights or erga omnes unlimited duties. The establishment of a permanent international criminal court with inherent jurisdiction over these crimes could be seen as a convincing argument for the proposition that crimes such as genocide, crimes against humanity and war crimes are part of jus cogens and that obligations to prosecute or extradite are erga omnes (Longobardo, 2018: 383-404). The problem, however, is that the Rome Statute adopted in 1998 does not envisage the ICC to have "inherent jurisdiction", a doctrine of English common law according to which a superior court has jurisdiction to hear any matter that comes before it unless a law or rule limits that jurisdiction or confers exclusive jurisdiction on another court (Schabas, 2020: 423-517; Comerford, 2019: 1-4). It can be argued that the ICC is a step towards establishing only limited ad hoc and territorial jurisdiction and binding rules for all states (Zakerhossein, 2021: 476-504). This is because the failure of states to comply with such rules by committing international crimes weakens, but does not destroy, the system.

Municipal law is frequently violated without questioning its legal status. However, international law, particularly international criminal law, appears to be more vulnerable. Hart's ideas could be jus cogens a rule of recognition for bases that provide a legal basis for criminal claims. Though, this is not exactly how it works.

5. Findings

The article concludes that H.L.A. Hart's positivist legal theory, which emphasizes the objective structure of legal norms and social rules, falls short in addressing the complex, multifaceted nature of international criminal law. Hart's focus on legal norms neglects critical aspects such as justice and human rights, which are essential in this field.

The article argues also that while Hart's theories provide a foundational understanding of law, his approach does not fully account for the dynamic and political factors influencing international criminal law. This highlights the necessity of incorporating natural law perspectives to better address the moral dimensions and justice-related concerns of international criminal law. A key finding is the inherent tension between positivist and natural law theories in shaping international criminal law. Hart's critique of natural law (based on the principle that law should have a determined and defined structure) fails to address the universality of justice that natural law advocates. The article suggests that international criminal law requires a balance between these approaches to ensure justice and accountability.

The analysis reveals that Hart's theory does not adequately address the provision of justice in the international context, especially concerning human rights violations. International criminal law, being closely tied to issues of human rights and justice, requires a legal framework that can handle moral judgments, which Hart's positivism tends to sideline. The article concludes by advocating for further research to explore how international criminal law can evolve to better integrate moral considerations and natural law principles, while maintaining the structural and normative strengths of positivism. This balance is seen as crucial for the future development of international criminal law.

4. Discussion

The philosophical debate between legal positivism and natural law theory forms the backbone of this article's analysis of international criminal law (ICL). In critically examining Hart's positivist approach, it becomes clear that while positivism offers a structural clarity to legal systems, its focus on

the objective nature of law often overlooks the moral and justice-oriented dimensions that are critical in the context of international crimes. This raises significant questions about the adequacy of positivist legal theories in areas of law where human rights, accountability, and justice play central roles.

Hart's distinction between primary and secondary rules provides a useful framework for understanding the structure and function of law in domestic contexts, but international law, and particularly ICL, introduces complexities that challenge his model. The absence of a centralized authority and clear enforcement mechanisms in the international legal system complicates the application of secondary rules, such as those of recognition, adjudication, and change, that Hart deems essential for a fully developed legal system. Moreover, Hart's separation of law and morality is problematic in a field like ICL, where moral imperatives are often deeply intertwined with legal norms. For example, the prosecution of war crimes, genocide, and crimes against humanity inevitably involves judgments that are not merely legal, but also moral. In cases like the International Criminal Court's (ICC) prosecution of human rights violations, moral judgments about justice and accountability play a central role in determining legal outcomes. Thus, Hart's reluctance to merge law with moral considerations risks rendering ICL detached from the very principles it aims to uphold.

On the other hand, natural law theory, with its emphasis on universal principles of justice and the intrinsic moral values of human rights, appears more suitable for dealing with the kinds of heinous crimes that ICL addresses. Natural law's focus on moral universality ensures that legal responses to war crimes, genocide, and crimes against humanity are grounded in ethical principles that transcend national borders and cultural differences. However, a purely natural law approach is not without its challenges. Critics argue that relying too heavily on moral principles can lead to uncertainty and subjectivity in legal proceedings. This underscores the need for a balanced approach that combines the objectivity of positivist norms with the moral framework of natural law. Such an integrated approach would ensure that ICL retains its structural integrity while being responsive to moral imperatives and justice.

The discussion in the article raises a pertinent question: can international criminal law benefit from a hybrid model that merges the normative clarity of positivism with the moral foundation of natural law? A hybrid approach would involve retaining the legal rigor and consistency of Hart's positivist model while incorporating natural law's moral guidance to ensure that ICL does not become mechanistic and disconnected from human rights concerns. In this context, courts like the ICC and ad hoc tribunals provide

useful case studies. These institutions already blend positivist legal norms with moral considerations, especially in cases of war crimes and genocide. By recognizing that legal norms must sometimes yield to moral imperatives to achieve justice, international criminal law can evolve into a more comprehensive system. This would enhance its legitimacy and effectiveness in addressing global crimes.

As ICL continues to evolve, it will likely face increasing pressure to strike a balance between legal formalism and moral responsibility. While Hart's positivist framework provides a solid foundation for the development of international law, the unique challenges of ICL—where issues of justice, human dignity, and moral accountability are paramount—require a broader approach. The integration of natural law principles into the positivist framework could offer a way forward, providing the flexibility and moral compass necessary to navigate the complexities of prosecuting international crimes. Ultimately, the article suggests that the future of ICL lies in embracing this duality, ensuring that the rigor of legal norms is complemented by a commitment to justice that reflects the moral consciousness of the global community.

Our discussion adds depth to the analysis by exploring the limitations of both positivism and natural law in the context of international criminal law and suggests the potential for a hybrid approach.

Conclusion And Evaluation

In this article, Hart's analysis of criminal law was seen as a good example of the central weakness of positivist projects. The positivist claim that the positive definition of law is separate from its moral validity has never been fully convincing. H.L.A. Hart's approach to international criminal law is centered on legal norms and argues that law has an objective nature. However, in complex and multicultural fields such as international criminal law, these norms are not clear enough to be universally accepted.

The natural lawyers claim that the tools used to define and evaluate law tend to overlap with morality. Hart's unwillingness to abandon the separation thesis in the face of this overlap stems from his strong conviction that the distinction between law and morality is vital. However, abandoning the strict theoretical approach of the separation thesis does not mean abandoning the critical approach to law. Moreover, it is already a reality that not every law or legal system that we disapprove of on moral or other normative grounds is recognized as law.

The relationship between the analysis of what law is and the defense of what law ought to be, however, is not such as to lead to the dogmatic assumptions or dangers of analytical inconsistency that Hart fears. It is in fact a process in which "the law that is and the law that ought to be" or "positive and critical morality" are the two poles. In contrast, the ambiguity of Hart's criminal law project illustrates this polarity. In Hart's case, his account of what law is (a system of rules) and his account of what criminal law should be are closely linked. Both are, in principle, based on the concept of law.

Therefore, Hart's normativist approach is insufficient for understanding and interpreting international criminal law. Moreover, while Hart's focus on norms and rules deals more with the content and structure of law, international criminal law is often shaped by social and political factors. Hart's approach clearly neglects these social and political dimensions due to his positivist reservations. Hart's focus on legal norms ignores the fundamental problems of international criminal law, such as justice and rights violations (See. Bix, 2018). Therefore, it seems that Hart's approach does not adequately address important issues such as the provision of justice and the protection of human rights. In fact, Hart's approach to criminal law is ideally suited to play both a critical and descriptive role. Both are an attempt to find a place for an important value and two opposing principles in the criminal justice system: utilitarianism and retributivism (Michael, 1992: 173-182). However, Hart's approach leads to cold and insensitive treatment of the law. In an area as sensitive and humanitarian as international criminal law, a purely norm-based approach is clearly inadequate. We might argue that a satisfactory account of modern international criminal law needs to find a balance between vengeance and a plan for the protection of the global community. Our assessment in this article highlights some of the weaknesses of Hart's approach to international criminal law and argues for the necessity of different perspectives and natural law approaches for a more comprehensive understanding. The continuing value of Hart's analysis of criminal responsibility is that it continues to be a source of such debates.

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