in light at least of the commitment shared by not only Plato and Aristotle that the goodness of things depends on virtue and the deployment of practical wisdom (*Euthydemus* 281–99, *Eudemian Ethics* VII.15) and that (as Brewer argues) the objects of wise judgment are particular and concrete.

While these last reservations mostly count as quibbles, the first two do not; they are significant for our understanding of what the ancient eudaimonists were up to. If we want to retrieve not only their questions but their answers, we will need to get these stories straight. It is not clear to me, however, to what degree Brewer thinks that what we need to retrieve is their answers, over and above their questions. But, to reiterate, I do not see that my concerns (even if valid) undermine Brewer's main project, nor the value and significance of engaging his organizing ideas. The level of Brewer's discussion makes the book less than suitable for anyone without considerable exposure to philosophical ethics, but for those who are interested not only in getting answers but in being sure we are asking the most important questions, Brewer has established a new agenda for reflection.

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Cane, Peter, ed. *The Hart-Fuller Debate in the Twenty-First Century*. Oxford, OR: Hart, 2010. Pp. 360. $75.00 (cloth).

The Hart-Fuller Debate in the Twenty-First Century, edited by Peter Cane, is the ideal entrance point into the famous debate between H. L. A. Hart and L. Fuller. While Hart's influence on the current state of the debate in legal philosophy is undeniable, Fuller has enjoyed a much deserved resurgence in popularity as of late, making a return to this debate all the more timely. The aim of Cane's edited collection is twofold: the chapters grapple with the debate on its own terms, while extracting lessons for the modern world. The book is remarkably successful at both tasks, but it is the first task on which I will focus, as it sets the stage for the second.

The book opens with Nicola Lacey's excellent contribution "Out of the 'Witches' Cauldron'?" which offers us a rare glimpse into the lives of both Hart and Fuller. Short excerpts from letters written by Fuller, scattered throughout, reveal a complicated relationship, both personal and professional, with his jurisprudential adversary. Fuller, Lacey reveals, was frustrated, as he was constantly being misunderstood. Lacey traces the sources of this misunderstanding back to a number of variables, including Fuller's intellectual background which was different from Hart's. Viewed through Hart's positivist's lens, Fuller's work is riddled with statements and ideas that were ripe for misunderstanding, many of which can be traced back to a fundamental difference of orientation.

Trained in economics and sociology and not in philosophy like his adversary, Fuller held that "the whole of legal philosophy should be animated by the desire to seek out those principles by which men's relations in society should be rightly and justly ordered" (26). The positivist enterprise, which sought to bring about a clean separation between legal facts and moral values, approached the world in a

markedly different way. From the positivist's perspective, Fuller could quickly be cast as a sociologist, interested only in contingencies, or as a traditional natural lawyer who saw law through a morally robust lens. Fuller wanted to resist both characterizations, so it was to his bemusement and dismay that he was quickly dismissed by Hart as a "'witches' cauldron'-style metaphysical natural lawyer" (21).

Lacey identifies an additional reason that placed Fuller at a notable disadvantage in the debate with Hart: by choosing to respond to Hart, he entered into the debate on Hart's terms. She notes that the "philosophical terms of the debate made it difficult to articulate some of the most original aspects of his thinking, and drew him into incautious generalizations which both flattened the subtlety of his vision of law as a social institution and generated some rather crude philosophical positions" (16). Many saw Hart as the victor in this exchange, but such a judgment cannot be made hastily, given all the variables at play. Lacey's contribution encourages readers to attempt to untangle the complex knot that is the Hart-Fuller debate, to see what jurisprudential insights can be garnered. To this end, the remainder of the essays are invaluable.

Desmond Manderson, for instance, invites readers to see the interplay of the debate and the perpetual "turn of the screw." Using Henry James's famous novel as a foil, Manderson suggests that it is an error to view the Hart-Fuller debate in terms of winners and losers. Instead he asks us to see the interplay between these competing perspectives as itself informative about the nature of law. Law is so complex that any given model can only capture a partial truth which leads us to alternative models, and then back again to the first, each casting light on certain features of our experience. Manderson is adamant that we "need both positions to make sense of law, but it is impossible to acknowledge them both at once" (200). But even Manderson has difficulty maintaining this neutral stance. He casts Hart in the unsympathetic role of "the governess," who is on "a quest for the definite, literal, or proper meaning of words or events" (203). Hart "behaves like the governess" when he "insists on a 'core of certainty' if we are to have law at all" (203).

The unrelenting quest for certainty produces the opposite. Ironically, it is Hart's unwavering desire for certainty that obscures familiar aspects of legal practice, as the "penumbra becomes very shadowy indeed" (203). While Hart dismisses Fuller for being obscure, it is Fuller who successfully demystifies adjudicatory practice by seeking to "bring legality back to *every* part of law, insisting that interpretation of core and penumbra alike are guided by knowable practices of legal reasoning" (204). However, Manderson notes that even Fuller cannot resist the temptation of choosing "mastery over uncertainty," as Fuller relies heavily on the very positivist assumptions that he had actively sought to dethrone—a point that is borne out when the debate shifts to a discussion of Nazi law (213).

Hart insists that the Nazis had law, but it was morally bad law. Fuller accuses Hart of offering a hasty and overly simplistic diagnosis of a complex situation (204). The Nazis enacted retroactive statutes and secret laws, removing altogether the possibility of self-directed action under the law. In short, the Nazis did not simply enact morally bad laws, they abused the legal form (the "inner morality of law") to serve their own ends. Fuller aims to shore up this point by reminding

us of the precise wording of one of the statutes that was relevant to the "wartime informer" cases: "The following persons are guilty of destroying the national power of resistance and shall be punished by death: Whoever publicly solicits or incites a refusal to fulfill the obligations of service in the armed forces of Germany, or in armed forces allied with Germany, or who otherwise publicly seeks to injure or destroy the will of the German people or an allied people to assert themselves stalwartly against their enemies" (Lon Fuller, "A Reply to Professor Hart," *Harvard Law Review* 71 [1958]: 630–72, 653). When the statute was applied, the word "public" was interpreted to include private conversation between a husband and a wife (which is surely a private conversation). Contra Hart, it is not simply the content of the law that is bad; rather, it is the manner in which judges applied the law that is worrisome. A powerful point, but, as Manderson observes, in expounding it, Fuller is lulled into heavy reliance on positivism (213). Fuller, at this juncture, is urging the judiciary to faithfully adhere to the letter of the law.

Those familiar with the Hart-Fuller debate will recall that earlier in his "Reply to Professor Hart" Fuller reprimands Hart for relying heavily on the linguistic resources found within positive law. Through a series of examples, Fuller illustrates how the meaning of legal norms is at least partially the product of an understanding of the purpose of the norm, which is itself informed by deeply held, often implicit, value assumptions. For instance, Fuller asks readers to consider the following rule: "It shall be a misdemeanour, punishable by a fine of five dollars, to sleep in any railway station." The businessman who falls asleep while waiting for a 3:00 a.m. train is not the target of the rule, but the man who is settling in for the night, with blanket and a pillow, is a more likely candidate even though he is not yet asleep (Fuller, "Reply to Professor Hart," 664). It is the purpose of the rule, and not simply the word "sleep," that makes it intelligible to those who are expected to be guided by it. While Fuller implies that it is legitimate to interpret the word "sleep" to mean "awake" in this case, he insists that it is not legitimate to interpret the word "public" to include "private." Why is a nonliteral reading acceptable in the first example but not in the second?

At this juncture we are invited to conclude, alongside Hart, that for Fuller, the central problem with these war-informer cases was the immoral outcome. So in an important sense, Hart was right. At the same moment that Fuller becomes positivistic, he also moves dangerously close to the witches' cauldron: the only difference that Hart could detect between his view and Fuller's at this point was that Fuller connected legal validity and moral merit. We have come across yet another turn of the screw.

Manderson identifies the lesson that Fuller should have drawn had he not relied so heavily on positivism: "Fuller does not acknowledge Nazism did not merely corrupt a legal system"; rather, "it realised a *vision* of it informed by the anti-positivist ideologies of German Romanticism up to and including Heidegger and Schmitt" (212). After all, the German citizen was still capable of self-directed action despite the permissive interpretations offered by judges. Indeed, it was this knowledge—the knowledge of how one could expect legal officials to behave—that the wartime informers used to their own advantage.

Things get more complicated still. The Hart-Fuller debate is fruitful not simply for what is said but for what is unsaid. Ngaire Naffine reminds us that neither Hart nor Fuller is particularly clear about what he means by "law," but they are both remarkably quiet on precisely how they employ the term "morals" (219). More needs to be said, she rightly insists, if we are going to fully understand the debate. Other unstated assumptions are shared by both Hart and Fuller. For instance, both thinkers assume that law is best conceived of as "universal phenomena," as a "single idea" (223). And they both "assume that their laws are not iniquitous; that they are moral in perhaps the deepest sense" (222). Naffine argues that this assumption may account for the failure of each to reflect on the deep inequalities in his own legal systems, reflections that could easily lead to alterations of their respective theories (224–25).

Hart's positivist torchbearers may wish to interrupt at this juncture to remind Naffine that Hart endorsed the *separability thesis* (the claim that there is no necessary connection between law and morality), but beyond the possibility of evaluating the content of the law, once properly identified, Hart did not have any evaluative aims. Consequently, insofar as Naffine is suggesting a value commitment that goes beyond such piecemeal evaluations, she is misreading Hart as Fuller once did. This retort, while common, may not hit the mark.

Gerald Postema, like Naffine, works to unearth some of the assumptions, and, in the process, he argues that Fuller successfully identified "an undercurrent of concern for the ideal of the rule of law (fidelity to law) in Hart's work, which was a positivist ideal of the rule of law" (259). Postema, in his chapter "Positivism and the Separation of Realists from Their Scepticism," argues that Hart has erred in assuming that legal reasoning was fundamentally different in the core and in the penumbra. The general thrust of his critique is that one must exercise judgment in every decision that is made; contra Hart, logic is as useless in the core as it is in the penumbra (262).

Postema also reminds readers that the Hartian method was not originally a self-standing project. Hart offered two arguments to support his conclusions: "clarity and the separations thesis" (266). However, if the distinction between the core and the penumbra does not hold, then clarity is not served (267); if the distinction does not hold, then the "positivists' version of the separation thesis does not support the identification of law with settled meaning, it just is the proposal to do so" (267). This is likely what Fuller is suggesting when he states that "it is not clear . . . whether in Professor Hart's thinking the distinction between law and morality simply 'is' or is something that 'ought' to be" ("Reply to Professor Hart," 631). It is an implicit value judgment that Fuller spies at the base of Hart's entire project.

As a conceptual point, the idea of the core and the penumbra is implausible (according to both Fuller and Postema), but Hart "had to have *some* reason for restricting 'law' to the settled meaning of rules" (269). The only reason that Fuller could think of was found in classical positivism: it is best if "we hold control of the exercise of power by holding those who wield it to rules that are public and undisputed" (269). From this perspective, we can see that Fuller could plausibly argue that Hart was committed to this particular conception of "fidelity of law." Hart's own arguments move him dangerously close to the witches' cauldron of the Hobbesian kind.

Postema argues that Hart's works do not simply provide positivists with their jurisprudential bearings, but many of his discussions found in the less popular passages of the *The Concept of Law* can point jurisprudential reflection in a different direction—a direction to which Fuller (and Postema) are more sympathetic (260). Postema's contribution illustrates how, with but a small shift in our conception of legal reasoning, we are led to a very different understanding of the nature of law. If legal reasoning is thought of as a process of reasoning ("disciplined practice of reason") rather than as a static set of laws, then we are quickly led to articulate an ideal of the rule of law. Postema does not abandon Austin's famous credo; rather, he maintains that an adequate understanding of what law is takes us beyond an understanding of law as fact (267).

Brian Bix, who is sympathetic to Postema's project, suggests that Postema is best understood as sketching a path toward a better understanding of the ideal of the rule of law rather than articulating a concept of law. Once this distinction is introduced, there is a tendency to dismiss accounts of the rule of law as "normative" and largely irrelevant to the jurisprudential project that Hart inaugurated. We can and should wonder whether the sharp distinction between the "rule of law" and "a concept of law" holds. Bix suggests that it does, but he notes that this is at least partly because today's positivists (of inclusive and exclusive varieties) rarely discuss legal reasoning (284). Perhaps this omission is best understood as a quiet concession that Hart's arguments regarding the core and the penumbra are not defensible.

It is not clear, however, that theories of law can insulate themselves from Postema's critique, even though there is often thought that the moves made by present-day positivists have all been successful (Margaret Martin, *Judging Positivism* [Oxford, OR: Hart, 2012], forthcoming). A tentative conclusion can be drawn at this juncture: the viability of Hartian conceptual analysis likely depends on the ability of present-day positivists to successfully distance themselves from Hart's account of legal reasoning. If this is so, there is a noteworthy implication: we have to determine whether the arguments forwarded by today's positivist are successful in order to properly assess the Hart-Fuller debate. This line of inquiry takes us beyond the confines of Cane's collection of essays. Nonetheless, Postema's contribution remains a powerful one because, regardless of the outcome of such an inquiry, his conception of the rule of law is trying to make sense of the same phenomena that the positivists are and is thus competitive with their project. Postema's challenge to Hart is both substantive and methodological. So, I would argue, is Fuller's.

Even if we set out to understand the Hart-Fuller debate on its own terms, we are quickly led beyond its confines. Cane intentionally sets out to move the debate beyond the terms of engagement as understood by both Hart and Fuller. The second aim of the book is to apply the lessons from the Hart-Fuller exchange to the problems and worries of the modern world. This is a task that is undertaken with great skill and with much success.

Readers are treated to an exchange between Jeremy Waldron and Margaret Davies over the value and the limits of the Hart-Fuller debate for legal pluralism. Both argue that Fuller has much to offer to this discussion, while Davies expresses deep worries (partly shared by Waldron) about the top-down structure of Hart's account of law. Martin Krygier also worries about top-down institutional

theories of law, as such theories can perpetuate the myth that legal systems can be readily created or transplanted. In his tour de force of the Hart-Fuller debate, Krygier takes a sociological turn. He urges us not to see law through the rigid lens of a single theory; rather he invites readers to explore the successes and failures of particular societies in the hopes of gleaning insights that can help legal practitioners, especially those who are carrying out their work in societies in transition.

Despite the fact that Hart and Fuller have little to say about international law or human rights, their exchange proves to be a valuable gateway for future study. Larry May and Christopher Kutz disagree about the extent to which the legal theories of Hart and Fuller contain an implicit recognition of habeas corpus, but they both agree that identifying links between traditional legal philosophy and international law is a fruitful endeavor. Hilary Charlesworth and Karen Knop take note of the glaring absence of any discussion of human rights in the Hart-Fuller exchange. Charlesworth argues that the language of rights is useful for the identification of abuses of power in both legal and nonlegal contexts, while Knop offers readers a number of possible ways to interpret the absence of any discussion of the kind in the Hart-Fuller debate, inviting us to think more deeply about what is said and what is unsaid.

Finally, the Hart-Fuller debate can be distilled down to basic ideas or expanded upon to fill the philosophical gaps left by both thinkers. Leslie Green and Anthony J. Sebok reflect on the first possibility. Sebok crucially analyzes Green's thesis that law is best understood as a means. The idea that law is but a means is present in the writings of both Hart and Fuller but is given full philosophical voice by Green. Cane's book also contains an excellent exchange between Philip Petit and Richard H. McAdams which focuses on Petit's impressive account of law's normative force. Both Hart and Fuller assume that the law is a normative phenomenon, but neither offers a complete theory on this point. So Petit sets out to fill this void.

The conclusion that one cannot help but draw after reading *The Hart-Fuller Debate in the Twenty-First Century* is that the philosophical insights that this debate is capable of generating take us far beyond the bounds of the jurisprudential debate, conventionally construed. This book promises to be a source of questions for the curious minds of all philosophical persuasions.

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Hurka, Thomas, ed. *Underivative Duty: British Moral Philosophers from Sidgwick to Ewing*.
Oxford: Oxford University Press, 2011. Pp. 225. $65.00 (cloth).

This collection of essays contains, in addition to an extensive and scholarly introductory survey by Thomas Hurka, nine essays by distinguished authors that discuss aspects of the writings of most of the great British moral philosophers of the first half of the twentieth century: Sidgwick, Rashdall, Moore, McTaggart, Prichard, Ross, Carritt, and Ewing. This is a pretty comprehensive coverage, though notable absentees include one of my personal favorites, C. D. Broad, and also F. H. Bradley. The knowledge and scholarship of the contributors is genu-