

# QUESTIONS-ANSWERS ON HERBERT HART

*www.jurantiel.com, par OMBOLO MENOGA Pierre Emmanuel*

## **1/ What was Herbert HART's date of birth?**

Herbert HART by his full name Herbert Lionel Aldaphus HART was born on July 18, 1907 in Harrogate, Yorkshire, England.

## **2/ What was Herbert HART's of death ?**

Herbert is died on December 19, 1992 aged of 85 in Oxford, Oxfordshire.

## **3/ What was Herbert HART's nationality ?**

Herbert HART was of British nationality.

## **4/ What is Herbert HART's academic background ?**

Herbert HART was educated at Bradford Grammar School and New College Oxford, where he obtained a brilliant first class in Classical Greats.

## **5/ What was HART'S thesis topic ?**

Herbert HART did not not write a doctoral thesis. He pursued an undergraduate degree in classical studies from New College, Oxford where he studied Law and qualified as a Barrister. Later, he studied philosophy at the same University.

## **6/ What was HART's subject in the aggregation competition ?**

Herbert HART, never took the aggregation competition, a purely French competitive exam, as he was British. However, after the second world war, he became interested in philosophy and conducted research on the legal philosophy.

## **7/ What is HART's academic career ?**

Hart was graduating at the university of Oxford, where he pursued his undergraduate education. He went on to qualify as a barrister. After that, Hart practised law for several years at the Chancery Bar from 1932 to 1940 along with Richard Wilberforce.

In addition, during the world war II, being unfit for active service, he worked for the British intelligence service in MI5. When the war ended precisely in 1945, he returned to Oxford and took up a fellowship in philosophy at New College and was appointed tutor of philosophy. He made a lot of research on legal philosophy and his chancery background gave him the title of the Oxford chair of Jurisprudence from 1952 to 1969.

Moreover, he was also visited in the year of 1956 to 1957 the Harvard law and philosophy faculties. He defended his positivist views by giving lectures Oliver Wendell Holmes on « positivism and the separation of Law and Moral » Against the main criticisms of sociologists and natural law theorists such as Lon Fuller.

Hart was an engaged academic during his reign. He was a fellow of University College. Later, he was appointed as Principal of Brasenose College in 1973, he served until 1978.

## **8/ What is HART's work ?**

HART was the foremost English legal philosopher of the 20th century. He made important contributions by his works on Legal positivism and legal enforcement of morality, legal rights, causation, and punishment. These notable works were :

- The Concept of law, published in 1960, and posthumous edition in 1994. It was translated to French in 1976. Hart presents a descriptive theory of law aimed to

applying all forms of law. His thesis is based on « positivism » which consists of a system of social rules. The system is composed of two types of rules namely, primary rules which directly govern behaviors and apply to all legal subjects especially of legal officials (judges and administrators), and secondary rules, which are concerned with identification (rule of recognition) application and interpretation (rules of adjudication) and modification (rules of change).

- Causation in the Law, published in 1959 and edited for the second time in 1985. This book has been written with Tony Honoré. They have developed A meticulous application of the linguistic method to the question of causality in a legal context.
- Law, Liberty and morality, published in 1963. Here, Hart invokes and defends Mill's "harm principle," on Homosexuality between adults. He claims that consensual intercourse between adult homosexuals does not constitute harm which legitimate the prohibition.
- The morality of the criminal law in 1965
- Punishment and Responsibility in 1968
- Essays on Bentham (the collections of the study of Bentham) that he published, in 1982.

## **9/ What are the influences of HART on his thinking ?**

HART is a legal philosopher who reinvigorated legal positivism after carry out a lot of research on legal philosophy. The legal positivism by HART means the separation of law and morality. He defended the insistence on the lack of necessary connection between law and morality. For him, that positivism is a theory of nature of law, not a theory of how lawyers should reason, judges should decide or citizens should act.

As a result, he was strongly influenced by the authors of this approach notably Jeremy Bentham and John Austin whose was his predecessors. He was also influenced by the linguistic

philosophy then current in Oxford, and employed its techniques more constructively.

Actually, his approach was a source of influence of more students to many topics as Jule COLMAN, MacCormick, Bayles, the collections Gavison, Hacker and Raz.

### **10/ What are HART's criticisms of his work ?**

The thesis of Hart has been in a very vulnerable situation because of a lot of critics from moral thinkers as Lon Fuller and Ronald Dworkin who said that the positivists strived to dissolve any number of apparently necessary connections between the law and morality. Some others positivism such as John Gardner, Joseph Raz have criticised it. Particularly John Gardner who assert that the separation is the propagation of a myth. He contents that « its to be absurd and no legal philosopher of note has even endorsed it ».

Par **MBENA OMBOLO Berthe Olivia**