

# Legalism: A Reconstruction and Critique of Judith Shklar's Concept

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## The author

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## The paper

There has been significant revival of interest in Judith Shklar's thought in recent years, centring around the claim that she was a precursor of the "realist" turn in political philosophy. A central thesis of such realism is that political philosophy needs to move away from legalistic counterfactual models of normativity as found in the works of John Rawls, Ronald Dworkin, and Jürgen Habermas. In this paper, I argue that Shklar's realism is much more ambivalent than these recent interpretations suggest: her psychological realism about human behaviour goes hand in hand with a trenchant critique of "political" realism. The best work in which to see these various tensions at play is her early book on *Legalism: An Essay on Law, Morals and Politics* (1964). While it is hard to reconcile the various dimensions of legalism as dissected by her analysis, Shklar shows how a robust conception of the rule of law, which does not shy away from acknowledging the entanglements of law and politics, is crucial to any defence of human freedom. Since *Legalism* was also written in (a thinly acknowledged) conversation with Hannah Arendt's *Eichmann in Jerusalem* (1963) I consider their diverging views on the relationship of law and politics. In conclusion, I propose an 'iterative' model to conceptualize the relation of law and politics and indicate very briefly how and why the legitimacy of the rule of law is to be grounded via a conception of public reason.