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VII. The unbearable lightness of moderate scepticism -- VIII. On the normativity of law, and on the digestion of judges -- 4. Towards a Unified Account of Discretion in Law -- I. Introduction -- II. HLA Hart and the concept of discretion. Back to the future? -- III. Dworkin and the (normative) no-strong-discretion thesis -- IV. Discretion as a pervasive feature of Kelsen's Stufenbaulehre. V. Discretion as balancing in Klatt (and Alexy) -- VI. The history of discretion in the administrative domain -- VII. Administrative discretion in Germany -- VIII. Discretion in the French-Italian administrative tradition -- IX. The concept of discretion in English administrative law -- X. Towards a unified account of discretion in law -- XI. Conclusion -- 5. Law and Language and as Language. An Alternative Picture of a Multifaceted Relationship -- I. Introduction -- II. The communicative model of law. A two-way affair? -- III. Beyond 'what is said'. Speech-act theory and the rise of pragmatics in legal interpretation -- IV. First objection: law as language, law and language(s) -- V. Second objection: speech-act vs text-act theory -- VI. Legal texts as 'autonomous' text-acts -- VII. An alternative theory of legal meaning: semantic minimalism -- VIII. Prolegomena to a theory of legal interpretation -- IX. Conclusion -- 6. Creation and Application of Law. An Analytical Distinction -- I. Introduction -- II. The two extremes: rejecting vs assuming the distinction -- III. Kelsen on the relativity of the distinction between creation and application of law -- IV. Creation of law: of the typicality of legal rules -- V. The principle of legality as a (semantic) meta-norm on law-creation and law-application -- VI. Unpacking the idea of 'application of law' -- VII. The potential asymmetry between norm-following and norm-application -- VIII. On the (different) normativity of power-conferring norms -- IX. Can only officials apply the law? -- X. Form and substance. Towards an analytical account of law-application -- XI. Conclusion -- XII. PS One final objection: interpretation, interpretation, interpretation! -- 7. The Separation of Powers. A Meta-theoretical Reassessment -- I. Introduction -- II. Genealogical issues. When was the separation of powers 'invented'? III. A twofold meta-theoretical ambiguity plaguing the discussion -- IV. The justificatory debate. Monism vs pluralism -- V. Critical approaches -- VI. The separation of powers as a formal theory and as a normative doctrine. On the advantages of maintaining a strict distinction -- VII. Conclusion -- Bibliography -- Index.

Sommario/riassunto

"This book investigates the conceptual structure of the distinction between creation and application of law, ranging widely across philosophy of law and philosophy of language, and incorporating a substantial discussion of the historical and philosophical foundations of administrative law. The book problematises critiques and offers the first analytical reconstruction of the distinction between creation and application of law within the structure of constitutional democracy. The argument straddles legal and political theory and builds upon cutting-edge insights from different philosophical disciplines, while also casting new light on long-standing issues in constitutional theory, such as the separation of powers doctrine."--
