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# POSITIVE LAW AND OBJECTIVE VALUES

*Andrei Marmor*

# Positive Law And Objective Values

**Robert Alexy**



## **Positive Law And Objective Values:**

**Positive Law and Objective Values** Andrei Marmor, 2001 This book presents a comprehensive defence of legal positivism on the basis of a novel account of social conventions Marmor argues that the law is founded on constitutive conventions and that consequently moral values cannot determine what the law is On the basis of a theory of social conventions and an analysis of law's authoritative nature the book sets out the scope of law in relation to moral and other critical values The book also maintains however that moral values are objective It comprises a detailed analysis of the concept of objectivity arguing that many aspects of the law and of moral values are metaphysically objective Positive Law and Objective Values Andrei Marmor, 2001 Marmor presents a defence of legal positivism on the basis of a novel account of social conventions arguing that the law is founded on constitutive conventions and that consequently moral values cannot determine what the law is Positive Law and Objective Values Andrei Marmor, 2001 Marmor presents a defence of legal positivism on the basis of a novel account of social conventions arguing that the law is founded on constitutive conventions and that consequently moral values cannot determine what the law is Law's Ideal Dimension Robert Alexy, 2021-07-16 Law's Ideal Dimension provides a comprehensive account in English of renowned legal theorist Robert Alexy's understanding of jurisprudence as expanded upon from his publications A Theory of Legal Argumentation OUP 1989 A Theory of Constitutional Rights OUP 1985 and The Argument from Injustice OUP 1992 The collection is divided into three parts Part One concerns the nature of law it explores its real and ideal dimensions and how the ideal dimension of law is sometimes employed but does not play a systematically important role Part Two discusses constitutional rights human rights and proportionality It defends the construction of constitutional rights as principles against objections raised by the rule construction and elaborates on the nature of constitutional rights as well as the mathematical balancing of those rights Part Three concerns the relation between argumentation correctness and law The author concludes this volume with a biographical reflection **The Legal Order of the European Union** Timothy Moorhead, 2014-05-30 The objective of European integration serves as an ideal of the legal order of the European Union and invites reconsideration of law's conceptual features This book critically assesses the legal order of the European Union focusing on the operative aspects of the Union constitution with particular reference to the institutional practices of the Court of Justice in expressing the values underlying this constitution Drawing together positivist and non positivist accounts within an institutional understanding of law Timothy Moorhead breaks new ground in applying a range of analytic jurisprudential perspectives to the Union legal order and in employing the theoretical resources provided by the Union to model a revised conceptual viewpoint concerning legal order generally In offering this conceptual approach Moorhead emphasises the flexibility inherent in law's institutional character as the basis for a theoretical rationalisation of the Union legal order This book will be of great use and interest to scholars and students of European Union Law Jurisprudence and European Constitutionalism The Nature and Value of

Vagueness in the Law Hrafn Asgeirsson, 2020-04-10 Lawmaking is paradigmatically a type of speech act people make law by saying things It is natural to think therefore that the content of the law is determined by what lawmakers communicate However what they communicate is sometimes vague and even when it is clear the content itself is sometimes vague This monograph examines the nature and consequences of these two linguistic sources of indeterminacy in the law The aim is to give plausible answers to three related questions In virtue of what is the law vague What might be good about vague law How should courts resolve cases of vagueness It argues that vagueness in the law is sometimes a good thing although its value should not be overestimated It also proposes a strategy for resolving borderline cases arguing that textualism and intentionalism two leading theories of legal interpretation often complement rather than compete with each other

*Objectivity in Jurisprudence, Legal Interpretation and Practical Reasoning* Villa-Rosas, Gonzalo, Fabra-Zamora, Jorge L., 2022-10-18 This thought provoking book explores the multifaceted phenomenon of objectivity and its relations to various aspects of jurisprudence legal interpretation and practical reasoning Featuring contributions from an international group of researchers from differing legal contexts it addresses topics relevant not only from a theoretical point of view but also themes directly connected with legal and judicial practice

**Law in the Age of Pluralism** Andrei Marmor, 2007-12-31 *Law in the Age of Pluralism* contains a collection of essays on the intersection of legal and political philosophy Written within the analytical tradition in jurisprudence the collection covers a wide range of topics such as the nature of law and legal theory the rule of law the values of democracy and constitutionalism moral aspects of legal interpretation the nature of rights economic equality and more The essays in this volume explore issues where law morality and politics meet and discuss some of the key challenges facing liberal democracies Marmor posits that a liberal state must first and foremost respect people's personal autonomy and their differing though reasonable conceptions of the good and the just This basic respect for pluralism is shown to entail a rather skeptical attitude towards grand theories of law and state such as contemporary constitutionalism or Dworkin's conception of law as integrity The values of pluralism and respect for autonomy however are also employed to justify some of the main aspects of a liberal state such as the value of democracy the rule of law and certain conceptions of equality The essays are organized in three groups the first considers the rule of law democracy and constitutionalism The second group consists of several essays on the nature of law legal theory and their relations to morality Finally the collection concludes with essays on the nature of rights the limits of rights discourse and the value of economic equality

*Essays in Legal Philosophy* Eugenio Bulygin, 2015-07-09 Eugenio Bulygin is a distinguished representative of legal science and legal philosophy as they are known on the European continent no accident given the role of the civil law tradition in his home country Argentina Over the past half century Bulygin has engaged virtually all major legal philosophers in the English speaking countries including H L A Hart Ronald Dworkin and Joseph Raz Bulygin's essays several written together with his eminent colleague and close friend Carlos E Alchourrón reflect the genre familiar from Alf Ross's *On Law*

and Justice Hans Kelsen's Pure Theory of Law and Georg Henrik von Wright's Norm and Action. Bulygin's wide ranging interests include most of the topics found under the rubric of analytical jurisprudence: interpretation and judicial reasoning, validity and efficacy of law, legal positivism and the problem of normativity, completeness and consistency of the legal system, the nature of legal norms and the role of deontic logic in the law. The reader will take delight in the often agreeably unorthodox character of Bulygin's views and in his hard hitting arguments in defence of them. He challenges the received opinion on gaps in the law, on legal efficacy on permissive norms and on the criteria for legal validity. Bulygin's essays have been wellnigh inaccessible in the past, appearing in specialized journals often in Spanish or German. They are now available for the first time in an English language collection.

**The Cambridge Companion to Legal Positivism** Torben Spaak, Patricia Mindus, 2021-02-04. Legal positivism is one of the fundamental theories of jurisprudence studied in law and related fields around the world. This volume addresses how legal positivism is perceived and makes the case for why it is relevant for contemporary legal theory. The Cambridge Companion to Legal Positivism offers thirty three chapters from leading scholars that provide a comprehensive commentary on the fundamental ideas of legal positivism, its history and major theorists, its connection to normativity and values, its current development and influence as well as on the criticisms moved against it.

**The Normative Force of the Factual** Nicoletta Bersier Ladavac, Christoph Bezemek, Frederick Schauer, 2019-06-26. This book explores the interrelation of facts and norms. How does law originate in the first place? What lies at the roots of this phenomenon? How is it preserved? And how does it come to an end? Questions like these led Georg Jellinek to speak of the normative force of the factual in the early 20th century, emphasizing the human tendency to infer rules from recurring events and to perceive a certain practice not only as a fact but as a norm, a norm which not only allows us to distinguish regularity from irregularity but at the same time to treat deviances as transgressions. Today Jellinek's concept still provides astonishing insights on the dichotomy of is and ought, to be the emergence of the normative, the efficacy and the defeasibility of legal norms and the distinct character of what legal theorists refer to as normativity. It leads us back to early legal history, it connects anthropology and legal theory and it demonstrates the interdependence of law and the social sciences. In short, it invites us to fundamentally reassess the interrelation of facts and norms from various perspectives. The contributing authors to this volume have accepted that invitation.

**Critical Legal Positivism** Kaarlo Tuori, 2017-03-02. This profound and scholarly treatise develops a critical version of legal positivism as the basis for modern legal scholarship. Departing from the formalism of Hart and Kelsen and blending the European tradition of Weber, Habermas and Foucault with the Anglo American contributions of Dworkin and MacCormick, Tuori presents the normative and practical faces of law as a multilayered phenomenon within which there is an important role for critical legal dogmatics in furthering law's self understanding and coherence. Its themes also resonate with importance for the development of the European legal system.

The Positive Theory of Capital Eugen von Böhm-Bawerk, 1923      **Purposive Interpretation in Law** Aharon

Barak,2011-10-16 This book presents a comprehensive theory of legal interpretation by a leading judge and legal theorist. Currently legal philosophers and jurists apply different theories of interpretation to constitutions, statutes, rules, wills, and contracts. Aharon Barak argues that an alternative approach, purposive interpretation, allows jurists and scholars to approach all legal texts in a similar manner while remaining sensitive to the important differences. Moreover, regardless of whether purposive interpretation amounts to a unifying theory, it would still be superior to other methods of interpretation in tackling each kind of text separately. Barak explains purposive interpretation as follows: All legal interpretation must start by establishing a range of semantic meanings for a given text from which the legal meaning is then drawn. In purposive interpretation, the text's purpose is the criterion for establishing which of the semantic meanings yields the legal meaning. Establishing the ultimate purpose, and thus the legal meaning, depends on the relationship between the subjective and objective purposes that is between the original intent of the text's author and the intent of a reasonable author and of the legal system at the time of interpretation. This is easy to establish when the subjective and objective purposes coincide. But when they don't, the relative weight given to each purpose depends on the nature of the text. For example, subjective purpose is given substantial weight in interpreting a will, objective purpose in interpreting a constitution. Barak develops this theory with masterful scholarship and close attention to its practical application. Throughout, he contrasts his approach with that of textualists and neotextualists such as Antonin Scalia, pragmatists such as Richard Posner, and legal philosophers such as Ronald Dworkin. This book represents a profoundly important contribution to legal scholarship and a major alternative to interpretive approaches advanced by other leading figures in the judicial world.

**The Methodology of Legal Theory**

Michael Giudice,2017-07-05 The last decade has witnessed a particularly intensive debate over methodological issues in legal theory. The publication of Julie Dickson's *Evaluation and Legal Theory* (2001) was significant as were collective returns to H. L. A. Hart's *Postscript to The Concept of Law*. While influential articles have been written in disparate journals, no single collection of the most important papers exists. This volume, the first in a three-volume series, aims not only to fill that gap but also propose a systematic agenda for future work. The editors have selected articles written by leading legal theorists, including among others Leslie Green, Brian Leiter, Joseph Raz, Ronald Dworkin, and William Twining, and organized under four broad categories: 1) problems and purposes of legal theory; 2) the role of epistemology and semantics in theorising about the nature of law; 3) the relation between morality and legal theory; and 4) the scope of phenomena a general jurisprudence ought to address.

The Structure of Pluralism Victor M. Muniz-Fraticelli,2014-02 Pluralism proceeds from the observation that many associations in liberal democracies claim to possess and attempt to exercise a measure of legitimate authority over their members. They assert that this authority does not derive from the magnanimity of a liberal and tolerant state but is grounded rather on the common practices and aspirations of those individuals who choose to take part in a common endeavor. As an account of the authority of associations, pluralism is distinct from other attempts to accommodate groups like

multiculturalism subsidiarity corporatism and associational democracy It is consistent with the explanation of legal authority proposed by contemporary legal positivists and recommends that the formal normative systems of highly organized groups be accorded the status of fully legal norms when they encounter the laws of the state In this book Muniz Fraticelli argues that political pluralism is a convincing political tradition that makes distinctive and radical claims regarding the sources of political authority and the relationship between associations and the state Drawing on the intellectual tradition of the British political pluralists as well as recent developments in legal philosophy and social ontology the book argues that political pluralism makes distinctive and radical claims regarding the sources of political authority and the relationship between associations and the state

**Authorities** Nicole Roughan, 2013-09 The interaction between state transnational and international law is overlapping and often conflicting Yet despite this messiness and multiplicity law still creates obligations for its subjects Despite its plurality law still claims some kind of authority The implications of this plurality of law can be troubling It generates uncertainty for law users over which law they are bound by or for law makers over the limits of their authority Thus the practical problem is not plurality of law in itself rather confusion over law s authority in such pluralist circumstances Roughan argues that understanding authority in such pluralist circumstances requires a new conception of relative authority This book seeks to provide the theoretical tools needed to bring the disciplines examining legal and constitutional pluralism into more direct engagement with theories of authority by examining the one practice in which they are all interested the practice of public authority

**Constitutional and Political Theory** Ernst-Wolfgang Böckenförde, 2017-01-26 Ernst Wolfgang Böckenförde b 1930 is one of Europe s foremost legal scholars and political thinkers As a scholar of constitutional law and a judge on Germany s Federal Constitutional Court December 1983 May 1996 Böckenförde has been a major contributor to contemporary debates in legal and political theory to the conceptual framework of the modern state and its presuppositions and to contested political and ethical problems Thus his writings have shaped not only academic but also wider public debates from the 1950s to the present to an extent that few European scholars can match As a federal constitutional judge and holder of one of the most important and most trusted public offices Böckenförde has influenced the way in which academics and citizens think about law and politics During his tenure as a member of the Second Senate of the Federal Constitutional Court several path breaking decisions for the Federal Republic of Germany were handed down including decisions pertaining to the deployment of missiles the law on political parties the regulation of abortion and the process of European integration In the first representative edition in English of Böckenförde s writings this volume brings together his essays on constitutional and political theory These include political theory of the state constitutional theory constitutional norms and fundamental rights the relationship between state citizenship and political autonomy Each of these cornerstones of Böckenförde s legal and political thinking feature introductions to the articles as well as a running editorial commentary to the work A second volume will follow this collection focusing on religion law and democracy **A**

**Constitutionalist Approach to the European Convention on Human Rights** Lisa Sonnleitner, 2022-04-21 This book presents a new constitutional argument for the legitimacy of evolutive interpretation of the ECHR It constructs a model in which evolutive and static constitutional principles are balanced with each other The author argues that there are three possible interpretive approaches in time sensitive interpretations of the ECHR but that only one of them is justifiable by reference to the constitutional principles of the ECHR in every single case The ECHR s constitutional principles either require an evolutive or static interpretation or they do not establish a preference relation at all which leads to a margin of appreciation of the member states in the interpretation of the Convention The balancing model requires the determination of the weights of the competing evolutive and static constitutional principles For this purpose the author defines weighting factors for determining the importance of evolutive or static interpretation in a concrete case      **The positive theory of capital, tr. with a preface and analysis by W. Smart** Eugen von Böhm-Bawerk, 1891



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