

LEGAL  
POSITIVISM  
IN AMERICAN  
JURISPRUDENCE

ANTHONY J. SEBOK

CAMBRIDGE STUDIES IN  
PHILOSOPHY AND LAW

# Legal Positivism In American Jurisprudence

**Robert A. FERGUSON, Robert A  
Ferguson**



## **Legal Positivism In American Jurisprudence:**

Legal Positivism in American Jurisprudence Anthony J. Sebok, 1998-10-28 This work represents a serious and philosophically sophisticated guide to modern American legal theory demonstrating that legal positivism has been a misunderstood and underappreciated perspective through most of twentieth century American legal thought

**Legal Positivism and the Growth of Twentieth Century American Jurisprudence** Anthony James Sebok, 1993

**The Blackwell Guide to the Philosophy of Law and Legal Theory** Martin P. Golding, William A. Edmundson, 2008-04-15 The Blackwell Guide to the Philosophy of Law and Legal Theory is a handy guide to the state of play in contemporary philosophy of law and legal theory Comprises 23 essays critical essays on the central themes and issues of the philosophy of law today written by an international assembly of distinguished philosophers and legal theorists Each essay incorporates essential background material on the history and logic of the topic as well as advancing the arguments Represents a wide variety of perspectives on current legal theory

The Legal Positivism of John Austin and the Realist Movement in American Jurisprudence Wilfrid E. Rumble, 1981

**Reading the Early Republic** Robert A. FERGUSON, Robert A. Ferguson, 2009-06-30 Reading the Early Republic focuses attention on the forgotten dynamism of thought in the founding era In every case the documents novels pamphlets sermons journals and slave narratives of the early American nation are richer and more intricate than modern readers have perceived Rebellion slavery and treason the mingled stories of the Revolution still haunt national thought Robert Ferguson shows that the legacy that made the country remains the idea of what it is still trying to become He cuts through the pervading nostalgia about national beginnings to recapture the manic depressive tones of its first expression He also has much to say about the reconfiguration of charity in American life the vital role of the classical ideal in projecting an unthinkable continental republic the first manipulations of the independent American woman and the troubled integration of civic and commercial understandings in the original claims of prosperity as national virtue Reading the Early Republic uses the living textual tradition against history to prove its case The first formative writings are more than sacred artifacts They remain the touchstones of the durable promise and the problems in republican thought

Originalism in American Law and Politics Johnathan O'Neill, 2005-07-12 This book explains how the debate over originalism emerged from the interaction of constitutional theory U S Supreme Court decisions and American political development Refuting the contention that originalism is a recent concoction of political conservatives like Robert Bork Johnathan O'Neill asserts that recent appeals to the origin of the Constitution in Supreme Court decisions and commentary especially by Justices Antonin Scalia and Clarence Thomas continue an established pattern in American history Originalism in American Law and Politics is distinguished by its historical approach to the topic Drawing on constitutional commentary and treatises Supreme Court and lower federal court opinions congressional hearings and scholarly monographs O'Neill's work will be valuable to historians academic lawyers and political scientists

The Hart-Fuller Debate in the Twenty-First

Century Peter Cane,2010-02-16 This book presents the papers and comments on those papers delivered at a colloquium held at the Australian National University in December 2008 to celebrate 50 years since the publication in the Harvard Law Review of the famous and wide ranging debate between HLA Hart and Lon L Fuller These essays do not to re run that debate and they are not confined to discussion of the jurisprudential issues canvassed by Hart and Fuller Rather they pick up on strands in the debate and re think them in the light of social political and intellectual developments in the past 50 years and changed ways of understanding law and other normative systems This collection looks forward rather than backward using the debate as a point of departure and inspiration      The Nature and Sources of the Law by John Chipman Gray John

Chipman Gray,2019-08-22 First published in 1909 and then again in 1997 John Chipman Gray 1839 1915 spent the greater part of his professional life as a professor at Harvard Law School where he taught property trusts and future interests The Nature and Sources of the Law was first published in 1909 The book is divided into two parts which respectively look at Nature and Sources In Part I Gray warns that the study of jurisprudence in isolation could lead to dogmatism Rather he advocates the structure offered by common law with its reliance on flexible interpretations of statutes the use of all relevant cultural inputs and a highly adaptable approach to the resolution of disputes Gray in Part II turns his attention to sources of the law and begins with statutes Here he asserts that judges are the ones who actually turn into law going against the conventional scholarship that judges merely interprets statutes He also extensively examines the influence of tradition and the common law      **The Philosophy of the Limit** Drucilla Cornell,2016-01-08 In The Philosophy of the Limit Drucilla

Cornell examines the relationship of deconstruction to questions of ethics justice and legal interpretation She argues that renaming deconstruction the philosophy of the limit will allow us to be more precise about what deconstruction actually is philosophically and hence to articulate more clearly its significance for law Cornell s focus on the importance of the limit and the centrality of the gender hierarchy allows her to offer a view of jurisprudence different from both the critical social theory and analytic jurisprudence      **Law As a Moral Judgment** Deryck Beyleveld,Roger Brownsword,1994 The philosophical

debate about the concept of Law is dominated by two traditions Legal Positivism and Natural Law Theory Within Anglo American Jurisprudence Legal Positivism is unquestionably the more popular approach Whilst in recent years there have been a number of assaults upon this ruling view opposition to Legal Positivism is still very much at the margins of contemporary Jurisprudence The authors of this major work argue however that Legal Positivism should be rejected contending that it is incorrect not in some minor detail but in what they take to be its central tenet the thesis that the concept of law is morally neutral Their contention amounts to a rejection of Legal Positivism in favour of Natural Law Theory Law as a Moral Judgment is an important and controversial contribution to Jurisprudence It puts forward a coherent and well argued case which will have to be answered by those of opposed opinion      **Maps and Mirrors** Steve Martinot,2001 Maps and Mirrors

explores the links and gaps between the aesthetic and the political at the intersection of philosophy and literature Testing the

major voices of aesthetic and literary theory it raises important questions about the implicit political contexts and commitments of thinkers from Kant to de Man Taken together the essays provide a tour of the complexities and richness of contemporary modes of critique     *The Role of Science in Law* Robin Feldman,2009 The allure of science Internalization of science in modern law Externalization in modern law The repetitions of history The nature of law What is science Misunderstanding the limits of science Improving the role of science in law     **Competition Law** Rosa Greaves,2017-11-30 This book was published in 2003 Competition anti trust law as a separate body of law is very much a creation of the 20th century and grew only in maturity in the latter half of that century As developments in US anti trust law have had and continue to have an important influence on the development of competition law in Europe and worldwide articles have been selected for this collection from both sides of the Atlantic The volume focuses on the following aspects the objectives and nature of competition law the scope of competition law selected legal concepts and challenges in competition law and the global application of competition law     **Beyond the Formalist-Realist Divide** Brian Z. Tamanaha,2009-10-26 According to conventional wisdom in American legal culture the 1870s to 1920s was the age of legal formalism when judges believed that the law was autonomous and logically ordered and that they mechanically deduced right answers in cases In the 1920s and 1930s the story continues the legal realists discredited this view by demonstrating that the law is marked by gaps and contradictions arguing that judges construct legal justifications to support desired outcomes This often repeated historical account is virtually taken for granted today and continues to shape understandings about judging In this groundbreaking book esteemed legal theorist Brian Tamanaha thoroughly debunks the formalist realist divide Drawing from extensive research into the writings of judges and scholars Tamanaha shows how over the past century and a half jurists have regularly expressed a balanced view of judging that acknowledges the limitations of law and of judges yet recognizes that judges can and do render rule bound decisions He reveals how the story about the formalist age was an invention of politically motivated critics of the courts and how it has led to significant misunderstandings about legal realism Beyond the Formalist Realist Divide traces how this false tale has distorted studies of judging by political scientists and debates among legal theorists Recovering a balanced realism about judging this book fundamentally rewrites legal history and offers a fresh perspective for theorists judges and practitioners of law     **Michigan Law Review** ,1999     **Nineteenth Century America in the Society of States** Cornelia Navari,Yannis A. Stivachtis,2023-12-01 This book examines how the United States adopted and contributed to the practices of international society the habits and practices states use to regulate their relations during the nineteenth century Expert contributors consider America s entry into international society and how independence forced it to enter into diplomatic relations with European states and start a permanent engagement with a society of states Individual chapters focus on U S perceptions of the international order and its place within it the U S position on international issues of that period and how America s perceptions and positions affected or were affected by the habits practices and institutions of

international society This volume will serve as an invaluable text for undergraduate courses focusing on international relations theory and U S foreign policy It will also appeal to established scholars in international relations diplomacy and international history and historical sociology      Towards Recognition of Minority Groups Marek Zirk-Sadowski, Bartosz Wojciechowski, 2016-02-24 This volume analyses current debates concerning problems in the nature justification and legal protection of human rights for minorities with reference to the issues surrounding social milieu as a source of any legitimized law which is in itself in need of legal recognition as well as being an object of legal protection With contributions from a global network of scientists across several continents the work examines the debate dedicated to the understanding of the normative framework expressed in terms of human rights that guarantee autonomous action in public and private for minority groups as well as individuals The chapters go on to study the particular claims that need to be audible and visible for others in the public sphere with reference to the legal protection of human rights The work concludes with the completion of an interpretative circle debating the issues of legal consensus and legal identity with respect to the specificity of the patterns and modes guiding human interactions Going beyond the legal analysis to discuss communication strategies in human rights this collection will be of great interest to those studying the philosophy and theory of law practical philosophy in general political sciences and theory of democracy      Constitutional Democracy Walter F. Murphy, 2007 Publisher Description      **The Cloaking of Power** Paul O. Carrese, 2010-02-15 How did the US judiciary become so powerful powerful enough that state and federal judges once vied to decide a presidential election What does this prominence mean for the law constitutionalism and liberal democracy In *The Cloaking of Power* Paul O Carrese provides a provocative analysis of the intellectual sources of today s powerful judiciary arguing that Montesquieu in his *Spirit of the Laws* first articulated a new conception of the separation of powers and strong but subtle courts Montesquieu instructed statesmen to cloak power by placing judges at the center of politics while concealing them behind juries and subtle reforms Tracing this conception through Blackstone Hamilton and Tocqueville Carrese shows how it led to the prominence of judges courts and lawyers in America today But he places the blame for contemporary judicial activism squarely at the feet of Oliver Wendell Holmes Jr and his jurisprudential revolution which he believes to be the source of the now prevalent view that judging is merely political To address this crisis Carrese argues for a rediscovery of an independent judiciary one that blends prudence and natural law with common law and that observes the moderate jurisprudence of Montesquieu and Blackstone balancing abstract principles with realistic views of human nature and institutions He also advocates for a return to the complex constitutionalism of the American founders and Tocqueville and for judges who understand their responsibility to elevate citizens above individualism instructing them in law and right      **The Foundation of Choice of Law** Sagi Peari, 2018-03-30 This book focuses on the subject of choice of law as a whole and provides an analysis of its various rules principles doctrines and concepts It offers a conceptual account of choice of law called choice equality foundation CEF which aims to flesh out the

normative basis of the subject The author reveals that despite the multiplicity of titles and labels within the myriad choice of law rules and practices of the U S Canadian European Australian and other systems many of them effectively confirm and crystallize CEF s vision of the subject This alignment signifies the necessarily intimate relationship between theory and practice by which the normative underpinnings of CEF are deeply embedded and reflected in actual practical reality Among other things this book provides a justification of the nature and limits of such popular principles as party autonomy most significant relationship and closest connection It also discusses such topics as the actual operation of public policy doctrine in domestic courts and the relation between the notion of international human rights and international commercial dealings and makes some suggestions about the ability of traditional rules to cope with the advancing challenges of the digital age and the Internet

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