Legal Positivism as a Method of Judicial Revitalization

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Inception

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Abstract

Historically, it is often observed that one of the first institutions of the state to be sacrificed in the wake of a slide into authoritarianism is that of the 'rule of law,' or in a broader sense, that of the judicial-legal order.[1] This analysis will contest that in the wake of great political unrest and turmoil, an under-evaluated topic is the operation of the legal systems of Western nation-states. I will frame this discussion around two major points. (1) With the rise of authoritarianism procedural justice has increasingly witnessed the resurgence of decisions that find their validity in sources external to the judicial system. These external sources include natural law, religious law, and what philosophers like Carl Schmitt and Giorgio Agamben refer to as the 'state of exception.' As this dynamic is being facilitated by the current political environment, it is evident that the use of authoritative sources derived outside of the legal system to justify decisions made within this system, will have many negative consequences to the rule of law, the proper administration of justice,

[1] This notion is well noted in Agamben's *State of Exception*. See pages 11-22. The use of the term 'West' or 'Western World' simply refers geographically to western Europe and North America.

and the practice of liberal democracy itself. (2) Therefore, this essay will defend the legal positivist tradition of law and demonstrate its applicability as a possible solution to these growing issues on the following grounds: (a), the need for law to be neutral; (b), the necessary separation of law and morality; (c), and the use of the rule of recognition. The final section will discuss legal positivism's important place within the modern state and conclude with a review of the paper's arguments along with some final thoughts. Overall, this essay concludes that the need for a return to the principles of legal positivism within our legal systems is more important than ever in our current politico-juridical context.

(1) External Sources of Legal Adjudication: Genealogies, Essential Concepts, and the Contemporary Context

It is first necessary to provide key definitions of the major concepts being analyzed and provide an illuminating sketch of the modern judicial environment, as these explanations will invariably assist in understanding the central argument of this paper. Put simply, the law, can be defined as a system of behavioral norms constituted as the sovereign expression of the power of the state, implemented and enforced through an authorized process by a person or an institution that has been granted the authority of legislative power, with the ultimate goal of upholding the stability of that particular polity being the primary motive of that body (Boyd, 2019, pp. 5-6).[2]

The paramount theme of this essay is to examine what might be the most prudent philosophical approach to the utilization and application of the law itself (jurisprudence). Undoubtedly, the two foremost means used to accomplish this task have been either through refence to external sources of validity beyond the confines

[2] See: Boyd, Neil. "Canadian Law: An Introduction." 7th ed., *Simon Fraser University*, 2019, pp. 3-11 for more details.

of the legal system, or through use of the legal positivist tradition.[3] One major source of external authority is the appeal to natural law. Fundamentally, the natural law tradition is grounded in a basic adherence to moral principles that are assumed to be universal (contra relativism), rational, and grounded in an objective ethical morality (Timmons, 2012, p.72).

The natural law tradition posits that there are a handful of central elements, 'basic goods' such as life, procreation, knowledge, and sociability, that are deemed essential to a fully realized human life and thus should be recognized by all legal systems (Ibid, p.76). As natural law theory attests that there is an identifiably objective 'good' and 'evil' which legitimizes legal decisions if they are in-line with this 'objective good,' people will often view morality and 'goodness' differently, therefore judicial judgements will tend to be very much open to arbitrary decisions that hold no referential linkage to the legal system if judges are permitted to reference their own 'objective morals' while adjudicating legal cases (Ibid, pp.82-83). Within the context of the contemporary West, this 'objective morality' is relatively synonymous with social conservative values that act as a deontological restraint intended to force individuals to adhere to specific standards of conduct, such as the traditional definition of the family, heterosexuality, and sobriety, for example (Ibid, pp.83-84).

The outbreak of the Thirty Years' War can serve as another example of the destructive results of resorting to external sources in the adjudication of law. Thus, the subsequent 1648 Peace of Westphalia, which ended religious and civil strife between Protestants and Catholics, introduced the principles of secularism into European law. In this way, it established the state as the only

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[3] Confusingly, many scholars refer to these two traditions by other names and titles (moral theory or analytical jurisprudence), but for the purposes of clarity this paper will refer to them in the form of which they have just been stated.

authoritative source of law, thus creating the conditions for the practice of legal positivism to emerge (Kayaoglu, 2010, pp.199-200). The essential point to infer is that reference to one's own sense of morality or religion to legitimate legal decisions leads to war and conflict.

Emerging from this context, the 18th and 19th centuries witnessed the growing practice of legal positivism within Western legal systems, with the works of Vattell, Hobbes, and Bodin. These authors entrench the "sovereign state's privilege as the sole representative of a country's population", as well as "the exclusion of what the ruler considers 'external' [naturally, morally, or divinely] from domestic authority structures" (Ibid, p.198). Significantly, the rise of legal positivism starkly parallels that of the development and maturation of modern Western democracy in the 20th century. It can be hypothesized that this parallelism has occurred because of legal positivism's identification (largely influenced by Bentham, Austin, and Mill) of the state as the fundamental and only authoritative source of law. This amounts to denying the "existence of any law outside and above the state" (Ibid, pp.199-200). This position is compatible with liberal modernity, tolerance, and rationality.[4] Consequently, the developed and established form of legal positivism that exists presently [*prima facie*], can be defined as analytical jurisprudence, since it is only concerned with the law as it is within a legal order (absent of moral considerations) that is positive in the sense that it requires human authority (will or force) to be valid (Boyd, 2019, pp. 6-8).[5]

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[4] See: Kayaoglu, Turan. "Westphalian Eurocentrism in International Relations Theory." *International Studies Review*, vol. 12, no. 2, June 2010, pp. 193–217, for further details.

[5] See: Dyzenhaus, David. "The Genealogy of Legal Positivism". *Oxford Journal of Legal Studies*, vol. 24, no. 1, 2014, pp. 39–67, p.57 and Pino, Giorgio. "The Place of Legal Positivism in Contemporary Constitutional States". *Law and Philosophy*, vol. 18, 1999, pp. 513–536, p.523.

Despite the success that legal positivism has experienced as a method of interpreting and applying the law in our judicial systems, its position has been challenged, and in some cases, sidelined by growing legal references to natural law theory and religious law. This phenomenon is what political theorist Wendy Brown calls neoliberalism's "activation of traditional morality in place of legislated social justice" (2019, p.21). A 'frankensteinian' neoliberalism has promoted markets and traditional morality against equality and secularism, thereby severing "truth from accountability (a recipe for authoritarianism) to contest equality and justice with tradition"; thus, manufacturing an opportune political-legal context that permits the citation of external sources of legal validity (Ibid, pp.10, 102 and 104). This dynamic has taken a more overt form of expressing itself through the rulings of judges. For instance, former Associate Justice of the California Supreme Court, Janice Brown, argued that "judges should look to higher authority than precedent or manmade laws in making decisions." Harvard Law School professor Laurence Tribe describes current Supreme Court Justice, Clarence Thomas, as the "first Supreme Court nominee in 50 years to maintain that natural law should be readily consulted in constitutional interpretation" (qtd. in [both] Murray, 2014, *TheAtlantic.com*). This has direct consequences in the distortion of legal justice as illustrated in two cases: *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *National Institute of Family Life Advocates, DBA NIFLA, et al. v. Becerra, Attorney General of California*. Both demonstrated how the First Amendment (in the American context) can be used to "privilege traditional morality and undermine democratic determinations," while threatening the "constitutional validity of much, perhaps most, government regulation" (Brown, 2019, pp. 124,129, and 143).[6] In this way, the proponents of natural law or religious law can use the

[6] Information on these two cases can be found in: Brown, Wendy. "In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West". *Columbia University Press*, 2019, pp.123-160.

legal system as a medium to impose their views on the law (Soper, 1992, p.2399).

References to external legitimating sources are not only used to legitimize one's own personal morality, or religious-legal belief, but can also be used to justify absolute and despotic political authority. Agamben describes how the use of the 'state of exception' has been used by authoritarian figures to subvert the law. The idea is to manufacture a crisis and govern by emergency decree for the 'betterment of the nation.' In this way, the sovereign authority stands outside the juridical order, but appears on the surface to somehow belong to it still. However, upon empirical observation, this sovereign authority is in fact *outside* of the legal system and is thus devoid of legal normativity (a condition achieved only within and apart of the juridical order).[7] The state of exception is a popular technique of populist authoritarians of our time: political figures such as Trump, Bolsonaro, Putin, or Erdogan have governed 'exceptionally'; by subjecting their judiciaries to their own political supremacy, while presenting themselves as the 'saviors' or 'supreme sovereign' figures of their nations, in order to subvert the legal system.

Consequently, the appeal to external non-legal sources, whether they are derived from claims to moral objectivity, religious law, or the need to 'save the nation from crisis,' open the interpretation of the law to biases in which subjective principles are presented as objective. The result is that principles that are external to law attain the full force of binding pronouncements of the legal system.

Interestingly, the interconnectedness between the use of exceptional governing measures and the current political atmosphere of undemocratic authoritarianism, appears to promote

[7] The best summation of Agamben's concept of the state of exception, can be found on pages 85-88, of Agamben, Giorgio. "State of Exception." The *University of Chicago Press*, 2005.

the blending of religious values (private right) with the secular law (public interest), consequently blurring the difference between private rights and the public interest. All this enhances the claims of "moral objectivity" and religious law within the legal system (Brown, 2019, p.138).[8] It may not then be coincidental that the Trump, Bolsonaro, Putin, and Erdogan regimes have used their authoritarian political positions to de-secularize their judiciaries through the active promotion of religious judges.

The legal system's failure in Western nations (most prominently in the American context) to function devoid of external influences [categorized as morally objectivist, religious, or despotic forces] ultimately distorts and prevents the proper administration of justice. The 'rule of law' requires that the law must be substantively and procedurally supreme over arbitrary power (Michener and Dicey, 1982, pp. 268-277). The use of non-legal external sources aptly fits the description of arbitrariness. As such, it is suggested that the growing "presence of so many arguments and decisions invoking the law of nature in the American reports [case law] makes a case for its influence" (Helmholz, 2015, p.170).

Thus far, we have both identified the unchecked use of external authoritative sources to justify legal decisions to be conflict prone and undemocratic, while further recognizing why legal positivism is crucial to the functioning of a modern judicial system. With this distinction being made, we can now turn our focus to the other primary dimension of this paper, which is to examine how the central principles of legal positivism can be an effective tool in curbing the growing distortion of justice.

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[8] See, also: Brown, Wendy. "In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West". *Columbia University Press*, 2019, p.129.

(2) Legal Positivism as a Mechanism of Mending

There are three major premises found within the ideational body of legal positivist theory that are most suitable for this task. The main tenets that exemplify this is (a) the need for law to be neutral (b), the necessary separation of law and morality (c), and the use of the rule of recognition. Thus, legal positivism predicates its legitimacy from its normative bearing within the legal system, allowing solutions to emerge from a position already embedded within the scope and site of these issues, giving it an innate advantage (a superior topological locus), over external 'foreign' solutions emanating from outside of the legal system.[9]

(a) The Need for Law to be Neutral

Akin to other teleological tools, the law contains a certain effective purity in remaining neutral to the ends and means of its function and purpose (Beltrán et al., p.175).[10] As legal positivist Joseph Raz states, this effective purity "is the virtue of efficiency; the virtue of the instrument as an instrument…for the law this virtue is the rule of law…thus the rule of law is an inherent virtue of the law, but not a moral virtue as such" (qtd. in ibid). For the law to be neutral, jurisprudential application and interpretation must be free of personal values, norms, convictions, and ethical-political assertions (Ibid, p.176).

It is easiest to conceive of moral neutrality (within a juridical context) as a standard to which the law must meet in its operation. The

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[9] Such external 'foreign' fixtures might be violent revolution or political interference. The word 'foreign' in this context simply means the non-legal nature of these actions which greatly hampers their ability to be taken permissibly within the judicial order.

[10] This sentence draws upon a salient line of thought by Joseph Raz. See: Beltrán, Jordi Ferrer, et al. "Neutrality and Theory of Law". Vol. 106, *Law and Philosophy Library*, 2012, p.175.

importance of moral neutrality can best be seen in its relation to the concept of the 'rule of law.' We may similarly conceive of this concept as "a set of formal and institutional features the law may possess in varying degrees…these features define an ideal, which laws have traditionally been expected to live up to" (Ibid). The need for the law to be neutral is absolutely necessary if the broader conception of a 'rule of law' is to be maintained. Neutrality assists the 'rule of law' through the insurance of mutual expectations (indifference, reciprocity, and fairness) and prescriptions (impartial legislation, statutes, and rules).[11] Essential to the 'rule of law' are source-based laws (laws that are readily accessible and applicable and determined by a single public judgment, counting as the judgment of the group [society]), which ensure mutual expectations only if they satisfy the requirements necessary (neutrality) for the 'rule of law' to exist (Ibid, pp.183,186, and 187). If the requirements for the 'rule of law' are fulfilled, an expectation of legal decisions will occur in which mutual expectations allow the law not to "work as an 'entrapment' device, encouraging expectations that it will afterwards frustrate," but produce reliable expectations (constancy and consistency [*stare decisis*]) (Ibid, p.187). In turn, the establishment of mutual expectations creates trustworthiness, reciprocity, and fairness between the citizenry and their political representatives (elected judges or judges appointed by elected politicians) within a stable legal system of interlocking reliability (Ibid).

The law must also be neutral in its prescriptions. Yet, prescriptions are largely the end-result of the legal process (enactment of legislation, statutes, and rules) which takes place under the title of 'rule of law.'[12] However, in order for the production of equitable and just prescriptions, we must identify the 'rule of law' itself as a "particular mode of the exercise of political power" (governance by law), since this allows us then to understand what this particular form

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[11] This layout of analysis is influenced by, Ibid, p.181.

[12] Ibid, pp.186 to 187

of power requires to produce neutral prescriptions (Ibid, p.191). The 'rule of law' is indeed an innate form or site of power, but this does not necessitate that it must be a type of exploitative power that relies on excessive punishments or abusive disciplinary power (in the Foucauldian sense).[13] The notion of neutrality within law can be used here to ensure that the 'rule of law' is a rational and transparent form of power (Ibid, p.192). If the criteria above have been met (mutual expectations resulting in reliability and constancy in judgement produced by neutrality), then neutrality also will allow the law to be open, clear, prospective, and non-contradictory (Ibid, 198-200). This will result in a 'rule of law' that is inevitably forced to adopt a rational and transparent exercise of power, thereby limiting the creation of negative prescriptions (discriminatory or racialized pronouncements for example) (Ibid).

Ultimately, a neutral legal system can succeed in ensuring the 'rule of law' within a polity so that the laws of that state may continue to properly guide human behavior in an equitable and just manner (Ibid, p.183). Consequently, we can conclude here that the "observance of the rule of law [through moral neutrality] is necessary if the law is to respect human dignity" (Ibid, p.176).[14]

(b) The Necessary Separation of Law and Morality

If it has been shown why the law must be neutral, then the next task is to ask and understand how this might occur. For the law to be neutral, any traces of non-neutrality must be separated, thus severing the link between a strictly legal domain and moral domain (Kramer, 2004, p.320). The separation thesis, being a long-standing theoretical tool of positivism, does this through its insistence that there is no required connection between law and morality [law as it

[13] Ibid, p.192.

[14] Originally stated by Joseph Raz, qtd. in ibid, p.176.

is (positivist) and law as it ought to be (naturalist) in the Humean sense] (Ibid, p.321). Let us examine a few key considerations.

While drawing heavily on the work of Bentham and Austin, a legal system is essentially a 'closed logical system' of which "correct legal decisions can be deduced by logical means" from already determined legal precedent (established law) without a need to refer to moral, social, or political aims (Hart, 1958, p.602). Moreover, in such a system, moral polemics then become exposed as insubstantial claims when put to the test of "rational argument, evidence, and proof" (Ibid).[15] Moreover, by creating a decision based on a previous one, positivist judges do not then produce 'new' law (outside of the legal system), rather they create 'similar' law (within the legal system) that enables them to apply the law analogously to all subjects under the law (Ibid, p.609). Therefore, the "separation of the grounds of legal judgment and the grounds of moral judgment, is…something to be valued and encouraged," as those who stand trial can expect a fair, just, and predictable hearing (Beltrán et al., p.177). In this way, the legitimacy and public reverence for the legal system amongst the citizenry is greatly enhanced.

Unavoidably, however, every human theory is always based on some set of evaluative judgments or morality. Despite the legal positivist insistence on the separation of law from morality, value-free theorizing does not exist (Kramer, 2004, p.326). Thus, what then exactly is the positivist separation thesis seeking to accomplish if it appears now to be self-contradictory? The separation of law from morality then becomes the replacement and acceptance of one type of value-based jurisprudential reasoning over another. If one

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[15] See: Grant, Claire. Review of *Positivism and the Separation of Law and Morals, Fifty Years On,* by Neil MacCormick, Nigel Simmonds, and Matthew Kramer. *Political Theory*, vol. 37, no. 1, Feb. 2009, pp. 167–173. JSTOR, doi: https://www.jstor.org/stable/20452686, for further information.

accepts a situation in which 'morality' (claims of a moral-political type) have been successfully extracted from the legal system, then what is left are strict theoretical-analytical values like "subtlety, non-redundancy, precision, plausibility, and clarity" (Ibid). These analytical values are not "moral in their tenor", therefore arguably making them unable to be placed within the same typological category of morality (Ibid).[16]

These theoretical-analytical values do not seek to replace one equally defined morality with another, but are based on a "comprehensive yet parsimonious analysis of sociopolitical life" (Ibid). This is shown through the well-established and historically observed fact (even presently shown in our political environment) that the purposes that humans "have for living in society are too conflicting and varying to make possible much extension of…some fuller overlap of legal rules and moral standards," because the combination of the two also entails the loss of the definitions that would be applied to either term if they had remained distinct (Hart, 1958, p. 623). Simply stated, the use of technical and impartial positivist theoretical-analytical values (again, which only can function after morality has been separated from the law) are better suited to govern the self-interested nature of human behavior.

As we can observe here, values *do* influence the law, but they do not *have* to be the foundation of the legal system (as natural law theorists claim). What is more salient to note is that the legal system itself is the only source of legal validity, and any reference to external considerations will impede this purist form of judicial

[16] See also, Morauta, James. "Three Separation Theses". *Law and Philosophy*, vol. 23, no. 2, Mar. 2004, pp. 111-135. JSTOR, www.jstor.org/stable/4150567, pp. 129-133.

administration.[17] For instance, morality, or discussions and debates of morality, cannot take place within the legal system, as it is itself an inherently public sphere of existence since the law applies to all incumbents of a specific geographical-territorial space inhabited by an operating polity. Morality has to exist outside of the legal system, it cannot operate from within because it will invariably distort the proper administration of justice. As well, this entails that there cannot be any broader appeals to justifications that exist outside of the legal order for actions conducted within it (emergency decrees, or exceptional powers). This then leads us to a deeper examination of our third point of discussion.

(c) The Rule of Recognition and the Dynamics of Subordination

Since it has been shown that it is the legal order itself which decides the validity of a legal norm, that legal norm then gains its 'normativity' from another antecedent norm that confers this 'normativity' upon it (Kelsen, 1959, pp.107-110). Therefore, the law can only be adjusted or changed if the act intended to do so is in accordance with a 'higher' norm that permits the act's enactment in that way (Ibid). Subsequently, this is how the 'rule of recognition' can be defined.[18] This rule keeps the legal system in check and prevents nefarious actors from citing external sources of law for their own purposes. Let us return in greater detail to Agamben's description of the 'state of exception' to further illuminate this point.

Agamben's 'state of exception' occurs when the sovereign authority of the state declares a condition of emergency that allows it to

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[17] See: Kramer, Matthew H. "On the Separability of Law and Morality". *Canadian Journal of Law and Jurisprudence*, vol. 17, no. 2, July 2004, pp. 315–336, pp.326, 334, and 335.

[18] See: Kramer, Matthew H. "In Defense of Legal Positivism: Law Without Trimmings." *Oxford University Press*, 2003, pp.130-132 for greater clarity.

bestow upon itself extra-judicial and extraordinary authoritative powers, while claiming that this procedure is legally legitimate (2005, p.35). Agamben then reveals that the 'state of exception' is in actuality not derived from the legal system itself, and therefore contests that "for what must be inscribed within the law [the 'state of exception'] is essentially exterior to it" (Ibid, p.40). Thus, the 'state of exception' as a legal norm cannot derive its legitimacy from the basic fundamental norm of a nation's constitution, since it manifests its practical application outside of the juridical system, demonstrating that "there is no internal nexus that allows one to be derived immediately from the other" (Ibid).

Agamben's 'state of exception' highlights the danger of allowing political actors to construct their own non-legal 'laws' (laws without a normative bearing), creating a pattern of action that will invariably facilitate future humanitarian and despotic abuses. This subordination of the law to superfluous external forces replaces the existence of a 'rule of law' with a real and existing 'rule of politics.' However, legal positivism's rule of recognition can prevent this arrangement from occurring because of its enforcement of a legal system that is comprised of interconnected norms that all find their validity from a basic fundamental norm, such as a nation's constitution (*Grundnorm*) (Kelsen, 1959, pp.107-110). This works to constrain the content of legal norms, thereby also restraining the growth of political power (Ibid).

Following this formula, fundamental rights, and liberties (concepts with constitutional status) can be maintained as the state must create legislation that acts in conformity with these fundamental rights and liberties (which are the 'basic norms of the legal system'). A failure to do so could entail the loss of that state's responsibility to govern.[19] Ultimately, the rule of recognition denotes that no norm of a positive legal system "created in conformity with the constitution

[19] Ibid, pp.140-146.

can be considered as non-valid, because its content is not in conformity with a norm that does not belong to that very order" (Ibid, p.110). We have now described the operation of a 'pure theory of law' and elucidated its importance to a just and democratic legal order.

The Place of Legal Positivism in the Contemporary State

If the "critical problem in our times is not one of finding fundamental principles for human rights, but that of protecting them," then most immediate site that requires the assistance of legal positivism is constitutional law (Pino, 1999, p. 531). It is this area of the law that has been identified specifically for this task precisely because the constitutional law of a state is often the prime protector of fundamental human rights (Ibid, pp. 529-530). It follows that if this area of the law can be infused with the tenets of legal positivism, then these rights may be more assuredly protected (Ibid).

If the supreme law of a nation becomes a harbinger for legal positivism, it can be inferred that the principles of legal positivism [(a), (b), and (c)] will become diffused to other areas of the law (criminal, family, and civil law for instance), resulting in an overall immensely improved juridical order. The issue in our current context is that the constitutional judgement of legal validity is predicated on value-judgements and substantive arguments (as per the norm), but these value-judgements and substantive arguments are dogmatic and polemical which confuses legality with rhetoric, producing an "omnipotent legislator" (Ibid, pp. 529-535). If these types of value-judgements and substantive arguments can be replaced with those of positivistic impartiality operating within a procedural framework solved by legal argumentation, then constitutional judges would be bound to the confines of the constitution (not external sources), thus

allowing them to judicially review legislation in accordance with fundamental constitutional rights (Ibid, p. 533).[20]

Concluding Thoughts

I have argued that the need for a return to the principles of legal positivism within our judicial systems is more important than ever in the current politico-juridical context that is plagued by an ever-increasing use of external sources of authority to enact arbitrary legal decisions. These external sources of authority have distorted the 'rule of law', the proper administration of justice, and in so doing have facilitated a broader slide into authoritarian despotism. Specifically, I have asserted that by employing the legal positivist tenets of (a), requiring the law to be neutral (b), separating law from individual morality (c), and enforcing the rule of recognition, lawless despotism may be averted. Nevertheless, I would acknowledge that the political scene will have to change in tandem with our methods of jurisprudential application, since the "durability and expansiveness of a typical government's dominion" is spatially and temporally vast (Kramer, 2003, p. 69). As Agamben maintains in *State of Exception*, law and politics must be disconnected to give way to a 'pure form of law' (2005, p. 88). Finally, it should be recalled that the law often arrives at decisions and judgements that will seriously affect people's lives (in some cases, life or death is on the line), careers, and well-being (Kramer, 2003, p. 189). Therefore, we cannot be "content with leaving this matter in the *terra incognita* of unrestrained judicial discretion and of subjective uncontrolled value-

[20] See: Pino, Giorgio. "The Place of Legal Positivism in Contemporary Constitutional States". *Law and Philosophy*, vol. 18, 1999, pp. 513–536, pp.528-536 and Dyzenhaus, David. "The Genealogy of Legal Positivism." *Oxford Journal of Legal Studies*, vol. 24, no. 1, 2014, pp. 39–67, p.57 and Pino, Giorgio. "The Place of Legal Positivism in Contemporary Constitutional States." Law and Philosophy, vol. 18, 1999, pp. 513–536, p.65, for further details.

judgments" (Pino, 2014, p. 211). Ultimately, legal positivism's fruitful potentiality, as a viable jurisprudential doctrine, would be a wise medium to use to grapple with our current complex situation (Kramer, 2003, p. 308).

References

Agamben, Giorgio. "State of Exception." *The University of Chicago Press*, 2005.

Beltrán, Jordi Ferrer, et al. "Neutrality and Theory of Law." *Law and Philosophy Library*. Vol. 106, *Springer*, 2012.

Boyd, Neil. "Canadian Law: An Introduction." 7th ed., *Simon Fraser University*, 2019.

Brown, Wendy. "In the Ruins of Neoliberalism: The Rise of Antidemocratic Politics in the West." *Columbia University Press*, 2019.

Dicey, A.V. "Introduction to the Study of the Law of the Constitution." Edited by Roger Michener, *Liberty Fund, Incorporated*, 1982.

Dyzenhaus, David. "The Genealogy of Legal Positivism." *Oxford Journal of Legal Studies*, vol. 24, no. 1, 2014, pp. 39-67.

Grant, Claire. Review of *Positivism and the Separation of Law and Morals, Fifty Years On*, by Neil MacCormick, Nigel Simmonds, and Matthew Kramer. *Political Theory*, vol. 37, no. 1, Feb. 2009, pp. 167-173. *JSTOR*, doi: https://www.jstor.org/stable/20452686.

Hart, H. L. A. "Positivism and the Separation of Law and Morals." *Harvard Law Review*, vol. 71, no. 4, Feb. 1958, pp. 593–629. *JSTOR*, www.jstor.org/stable/1338225.

Helmholz, R H. "Natural Law in Court: A History of Legal Theory in Practice." *Harvard University Press*, 2015.

Kayaoglu, Turan. "Westphalian Eurocentrism in International Relations Theory." *International Studies Review*, vol. 12, no. 2, June 2010, pp. 193-217.

Kelsen, Hans. "On the Basic Norm." *California Law Review*, vol. 47, no. 1, Mar. 1959, pp. 107-110.

Kramer, Matthew H. "In Defense of Legal Positivism: Law Without Trimmings." *Oxford University Press*, 2003.

Kramer, Matthew H. “On the Separability of Law and Morality.” *Canadian Journal of Law and Jurisprudence*, vol. 17, no. 2, July 2004, pp. 315-336.

Morauta, James. “Three Separation Theses.” *Law and Philosophy*, vol. 23, no. 2, Mar. 2004, pp. 111-135. *JSTOR*, www.jstor.org/stable/4150567.

Murray, Anthony. “When Judges Believe in ‘Natural Law.’ *The Atlantic*, 27 Jan. 2014, www.theatlantic.com/national/archive/2014/01/when-judges-believe-in-natural-law/283311/.

Pino, Giorgio. “Positivism, Legal Validity, and the Separation of Law and Morals.” *Ratio Juris: An International Journal of Jurisprudence and Philosophy of Law*, vol. 27, no. 2, June 2014, pp. 190-217.

Pino, Giorgio. “The Place of Legal Positivism in Contemporary Constitutional States.” *Law and Philosophy*, vol. 18, 1999, pp. 513-536.

Soper, Philip. “Some Natural Confusions about Natural Law.” *Michigan Law Review*, vol. 90, no. 8, Aug. 1992, pp. 2393-2423. *JSTOR*, https://www.jstor.org/stable/1289576.

Timmons, Mark. “Moral Theory: An Introduction.” 2nd ed., *Rowman & Littlefield Publishers*, 2012.