

LEGAL  
POSITIVISM  
IN AMERICAN  
JURISPRUDENCE

ANTHONY J. SEBOK

CAMBRIDGE STUDIES IN  
PHILOSOPHY AND LAW

# Legal Positivism In American Jurisprudence Legal Positivism In American Jurisprudence

**George David Miller**



## **Legal Positivism In American Jurisprudence 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 *Reinventing American Jurisprudence* George David Miller, 2021-11-05 In *Reinventing American Jurisprudence* Law through the Lens of Value George David Miller and Laura Brown unfurl an original approach to value and an imaginative landscape in philosophy of law Value essentialism identifies value formations such as a sacred cow and scapegoat tandem and the intensification of oughtness as it approaches sacred zenith values Readers learn how Occam's razor has been responsible for the death of many ideas how the celebrated Other gains nuance as near and remote and where a spectral assessment of probability and necessity leads Analyses of Supreme Court cases grow out in different and exciting directions Buck was not about eugenics but another iteration of the value of efficiency and Yo Wick was decided less on law and more on a justice's finding humanity in Chinese laundry mat proprietors Lochner involved not an ideological binary but three distinct value schemes Separate but equal was refined as parallelism and exploitative tangents In Brown the Fourteenth Amendment took a significant subjective turn In Heller the communitarian position of stopping violence before it began could be contrasted with the individualistic position of waiting until you see the whites of their eyes in your bedroom Citizens United was distilled into the question was the First Amendment designed to maximize participation or maximize democracy *Patterns of American Jurisprudence* Neil Duxbury, 1995-06-08 This unique study offers a comprehensive analysis of American jurisprudence from its emergence in the later stages of the nineteenth century through to the present day The author argues that it is a mistake to view American jurisprudence as a collection of movements and schools which have emerged in opposition to each other By offering a highly original analysis of legal formalism legal realism policy science process jurisprudence has evolved as a collection of themes which reflect broader American intellectual and cultural concerns [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

*Stateless Law* Helge Dedek, Shauna Van Praagh, 2016-03-03 This volume offers a critical analysis and illustration of the challenges and promises of stateless law thought pedagogy and approaches to governance that is understanding and conceptualizing law in a post national condition From common civil and international law perspectives the collection focuses on the definition and role of law as an academic discipline and hybridity in the practice and production of law With contributions by a diverse and international group of scholars the collection includes fourteen chapters written in English and three in French Confronting the transnational challenge posed to the traditional theoretical and institutional structures that underlie the teaching and study of law in the university the seventeen authors of *Stateless Law* *Evolving Boundaries of a Discipline* bring new insight to the ongoing and crucial conversation about the future shape of legal scholarship education and practice that is emblematic of the early twenty first century This collection is essential reading for academics institutions and others involved in determining the future roles responsibilities and education of jurists as well as for academics interested in Law Sociology Political Science and Education

**Research Handbook on Modern Legal Realism** Shauhin Talesh, Elizabeth Mertz, Heinz Klug, 2021-03-26 This insightful Research Handbook provides a definitive overview of the New Legal Realism NLR movement reaching beyond historical and national boundaries to form new conversations Drawing on deep roots within the law and society tradition it demonstrates the powerful virtues of new legal realist research and its attention to the challenges of translation between social science and law It explores an impressive range of contemporary issues including immigration policing globalization legal education and access to justice concluding with an examination of how different social science disciplines intersect with NLR

*Fighting Back: Libertarian Essays on Resisting the State* C. R. Clark, II, 2010-05-03 In three essays the author looks at means for resisting the state and the repercussions of putting them into action A history of jury nullification is followed by analysis on whether or not jurors should nullify the law Tax resistance is examined as a civil disobedience tool Finally direct action is considered with discussion of the rights to defense against excessive force and defense against unlawful arrest Original work by C R Clark II

Legal Positivism Tom Campbell, 1999 17 Stanley L Paulson 1992 The Neo Kantian Dimension of Kelsen's Pure Theory of Law *Oxford Journal of Legal Studies* 12 pp 311 32 18 Anthony J Sebok 1995 Misunderstanding Positivism *Michigan Law Review* 93 pp 2054 132 Name Index

**A Republic of Law** Frank Lovett, 2016-07-07 Frank Lovett presents a powerful theory of the rule of law and its connection to freedom and social justice

**The Force of Law** Frederick Schauer, 2015-02-10 Many legal theorists maintain that laws are effective because we internalize them obeying even when not compelled to do so In a comprehensive reassessment of the role of force in law Frederick Schauer disagrees

demonstrating that coercion more than internalized thinking and behaving distinguishes law from society's other rules

**The ^AFoundation 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 It 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 *Creon's Ghost Law Justice and the Humanities* Tomain, 2009-02-16 Since the ancient Greeks a perennial theme in both literature and philosophy has been the conflict between man's law and higher law Creon's Ghost explores key humanities texts discussing this conflict while bringing these texts to bear upon a wide range of contemporary legal problems As these debates are considered in this book the author uses texts such as Antigone and Plato's Republic and pairs them with the most important jurisprudence texts of the 20th century to explore different approaches to the issue or court ruling under consideration *The Public Order and the Sacred Order: Contemporary Issues, Catholic Social Thought, and the Western and American Traditions* Stephen M. Krason, 2009-05-20 The Public Order and the Sacred Order evaluates a range of contemporary social and political questions in light of Catholic social teaching philosophy great political thinkers and America's founding tradition It treats a wide range of topics including economics education free speech abortion church state relations American legal trends international politics Through discussions of these and other issues confronting contemporary American society author Stephen M Krason offers a scholarly social commentary suggests means for a reconstruction of sound social and political thought and calls for a renewal of American institutions politics and culture The book is structured in three parts Part I sets out foundational principles guided by Catholic social teaching philosophical reasoning Western political thought and the American founding Part II examines and evaluates the numerous issues in light of the principles set out in Part I and Part III provides approaches to the issues both general and specific policy ideas consonant with the foundational principles set out in Part I There is also a volume of important Catholic Church documents Supreme Court cases and excerpts of important writings in the history of Western and American political thought that let the reader examine directly many documents discussed in the text of the book Along with being a strong and focused defense of traditional Catholic approaches to the questions of our time the vast array of material covered makes this book an invaluable reference for anyone interested in contemporary politics

**Law and Administration** Carol Harlow, Richard Rawlings, 2006 *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 Structure of Pluralism** Victor M. Muniz-Fraticelli,2014-02-27 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

*Formalism and the Sources of International Law* Jean d'Aspremont,2013-05-23 This book revisits the theory of the sources of international law from the perspective of formalism It critically analyses the virtues of formalism construed as a theory of law ascertainment as a means of distinguishing between law and non law The theory of formalism is re evaluated against the backdrop of the growing acceptance by international legal theorists of the blurring of the lines between law and non law At the same time the book acknowledges that much international normative activity

nowadays takes place outside the ambit of traditional international law and that only a limited part of the exercise of public authority at the international level results in the creation of international legal rules The theory of ascertainment that the book puts forward attempts to dispel some of the illusions of formalism that accompany the traditional sources of international law It also sheds light on the tendency of scholars theorists and advocates to deformalize the identification of international legal rules with a view to expanding international law The book seeks to revitalize and refresh the formal identification of rules by engaging with some tenets of the postmodern critique of formalism As a result the book not only grapples with the practice of law making at the international level but it also offers broad theoretical insights on international law dealing with the main schools of thought in legal theory positivism naturalism legal realism policy oriented jurisprudence and postmodernism This paperback edition features the author s discussion of this book on the EJIL Talk blog

## **Legal Positivism In American Jurisprudence Legal Positivism In American Jurisprudence** Book Review: Unveiling the Power of Words

In some sort of driven by information and connectivity, the power of words has become more evident than ever. They have the capability to inspire, provoke, and ignite change. Such is the essence of the book **Legal Positivism In American Jurisprudence Legal Positivism In American Jurisprudence**, a literary masterpiece that delves deep in to the significance of words and their effect on our lives. Compiled by a renowned author, this captivating work takes readers on a transformative journey, unraveling the secrets and potential behind every word. In this review, we will explore the book is key themes, examine its writing style, and analyze its overall impact on readers.

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