

SPECIAL WORKSHOP 45

Legal Interpretation and the Separation of Law and Morals

Convenors:

- Giorgio Pino (University of Roma Tre)
- David Duarte (University of Lisbon)

Workshop presentation:

Even if legal positivism is normally credited to subscribe to the thesis of the separation between law and morality, it is not entirely clear what this thesis exactly amounts to (is it a thesis about the concept of law? about the identification of the law? about legal validity?), and it is even disputed whether legal positivism is really supposed to be committed to this thesis, as opposed to the more fundamental 'social fact thesis'. An important challenge to the idea of the separation between law and morality comes from the theory and practice of legal interpretation. Indeed, legal positivists themselves are largely inclined to think that legal interpretation highlights an important and pervasive relation between law and morality.

Evaluative and even moral judgements can affect legal interpretation in many ways. Many interpretive techniques actually require the interpreter to resort to evaluative and even moral judgments. This is quite clear in analogical reasoning, for instance, as well as in the "extraction" and application of legal principles, or of precedents. Evaluative and even moral judgements can be required in cases of conflicts of legal norms, gaps, defeasibility. Even in more routine cases a legal text may be interpreted in many alternative ways, and so the interpreter is faced with a choice among several interpretive outcomes, a choice that is ultimately inspired by evaluative considerations. At an even deeper level, the interpreter has to choose among the many different styles and techniques of legal interpretation that are available in a certain legal culture, and again this choice is itself a matter of substantive ethical-political preferences, guided by such factors as fidelity to democratic values, or stability and certainty in legal decisions, reasonableness, justice for the specific case at hand, and so on.

Time and Place

Monday 8 of July Morning:

- 08:30 to 13.15 (coffee break between 10:30 and 11:00) – Room HS 4

Monday 8 of July Afternoon:

- 14:00 to 18.00 (coffee break between 16:15 and 16:30) – Room HS 4

Tuesday 9 of July Afternoon:

- 14:00 to 18:00 (coffee break between 16:15 and 16:30) – Room HS 4

Presentations

Monday 8 of July:

- 08:30 / 09:00: **Giorgio Pino / David Duarte:**

- «Welcome»

- 09:00 / 09:45: **Andrew Hadjigeorgiou:**

- «Hart on the Interpretation of Law: The Possible, the Probable, and the (Morally) Correct»

- 09:45 / 10:30: **Marco Loschiavo Barros:**

- «Is There a Consequentialist Reasoning in Law ? An Exam From the Brazilian Federal Supreme Court»

- 10:30 / 11:00: - coffee break

- 11:00 / 11:45: **Maija Aalto-Heinilä:**

- «The Underlying Values of Canons of Interpretation»

- 11:45 / 12:30: **Jorge Silva Sampaio:**

- «Spotlights of Determinacy and Objectivity Within Legal and Constitutional Interpretations»

- 12:30 / 13:15: **Douglas Lind:**

- «Dinah and Her Children: An Essay on the Normative Content of Positive Law»

- 13:15 / 14:00: lunch

- 14:00 / 14:45: **Torben Spaak:**

- «Legal Interpretation as a Special Case of Moral Interpretation»

- 14:45 / 15:30: **Cesar Serbena:**

- «What Is a Fact in the Context of a Legal System ? A Not So Simple Question»

- 15:30 / 16:15: **Iza Skoczen:**

- «The Ontology of Law of Interpretation»

- 16:15 / 16:30: coffee break

- 16:30 / 17:15: **Ana Escher:**

- «Once Cats Return From the Dead: Open Texture and Legal Discretion»

- 17:15 / 18:00: **Giulio Itzcovich:**

- «Judicial Dialogue and the Separation of Law and Morals»

Tuesday 9 of July:

- 14:00 / 14:45: **Aldo Schiavello:**

- «Interpretation and Authority»

- 14:45 / 15:30: **Pierre Brunet:**

- «The Moral Justification for Legal Interpretation»

- 15:30 / 16:15: **Pedro Moniz Lopes:**

- «Naturalizing Interpretation: Some Remarks on «Hardware» and «Software» in Legal Interpretation»

- 16:15 / 16:30: coffee break

- 16:30 / 17:15: **Mauro Barberis:**

- «The Moral of Interpretation. Law, Politics and Other Tales»

- 17:15 / 18:00: **Christopher Wekel:**

- «Positivist Principle Theory: Towards a More Reliable Coordinate Grid for Judicial Discretion»