

PHILOSOPHY OF LAW

INTRODUCTION

Literature:

A. Marmor, *Philosophy of Law*

INTRODUCTION

- electronic signpost: „Hands Free Phone, July 1st, It's The Law!”
 - informs us about some *events* + reminds us that *we ought* to behave in a certain way
 - facts \Rightarrow legal obligation
- law = system of legal norms
- law purports to guide action, alter modes of behaviour, constrain the practical deliberation of its subjects – give us reasons for action
- \Rightarrow **normative (prescriptive) character of law**

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- legal norms are typically:
 - products of human creation (human action)
 - intentional human products (products of an act of will)
- human action + human will => obligation?
- two main questions:
 - *legal validity* (legality): What makes it the case that some norm is a norm of law?
 - *legal normativity*: What is the nature of the "ought" that is prescribed by such norm?

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1) legal validity

- What makes x a legal norm?
- tied to a place and time (unlike moral or logical validity)
- philosophical question: what are *generally* the conditions that make x legally valid?
 - social facts alone (but what makes particular social facts legally significant?)
 - social facts + normative considerations (content of a norm)
 - moral reasoning

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- **legal validity conditions and schools of thought**
 - **legal positivism:** complex set of social facts (human actions, beliefs, attitudes)
 - reduction?
 - **natural law:** social facts + content (minimal threshold of moral acceptability)
 - *lex iniusta non est lex* (St. Augustine)
 - **Dworkin and inclusive legal positivism:** moral content is not a necessary condition,⁵ but it may be a sufficient one

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- possibility of detaching the conditions of legal validity from the evaluative content of the putative norms in question
 - legal positivism: substantive detachment view
 - conditions of validity are detached from content
 - non-positivists: substantive nondetachment view
 - what the law *is* partly depends on what the law *ought to be*

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2) legal normativity

- the law purports to provide us with reasons for action (but what kind of reasons?)
- Is there a moral obligation to obey a legal obligation (or the law)? (moral question)
- What is the nature of the legal "ought"? (legal-philosophical question)
 - species of moral obligation?
 - like moral obligation, but from a different point of view (Kelsen)?
 - predictive statement about undesirable consequences (Austin)?
- legal normativity and the schools of thought

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3) nature of legal philosophy

- methodological approaches
- descriptive legal philosophy
 - *if* substantive detachment view,
 - *then* a philosophical account of what law is can be detached from its normative content
 - methodological detachment view
- normative legal philosophy
 - *if* substantive nondetachment view
 - *then* a philosophical account of what the law is cannot be detached from its normative content
 - methodological nondetachment view

Thank you for
your
attention!