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Objectivity in Law

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Abstract
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1. *Introduction*

Legal positivists, interpretivists and natural law theorists have recognized the importance of the question of whether there is a kind of objectivity specific to law. An adequate response to this question is envisaged as being a reasonable defence against the attacks of critical legal theorists, feminist theorists and so on. These theorists argue that the language of 'objectivity' disguises the uncertain and arbitrary nature of the legal decision-making process and renders law vulnerable to manipulation and ideological imposition. But the debate on objectivity in law did not begin as a defence to the critics' position. Contemporary interest on the topic in legal philosophy began in the 1970s; it focused on the more general question of whether there are 'right' answers in law. Questions about legal objectivity were introduced to legal philosophy by Dworkin's legal theory (Dworkin; *Taking Rights Seriously,* 'Truth and Objectivity: You'd Better Believe it', *Law's Empire* and *Justice in Robes*). Important replies followed Dworkin's initial publications (Mackie, 'The Third Theory of Law') and the debate has subsequently taken different directions and attracted increasingly sophisticated claims and accounts.

In order to disentangle the complex issues that arise out of the different conflicting theoretical positions and to establish a clear path that will enable us to understand the key issues, four core questions are identified. The first is whether moral and legal values are objective. Second, what is the nature of the relationship between legal and moral values? The third is whether, due to the specific nature of law, we should consider a domain-specific conception of objectivity for legal values. The fourth concerns whether there is a correspondence between legal values and legal facts. What is the explanation of the platitudes about the nature of law such as that law is reason giving, normative or authoritative in character? In other words, do legal facts have a place in our 'disenchanted' or naturalistic (in the scientific sense) understanding of the world.

In the first part of this study, I discuss the different kinds of objectivity, general and legal objectivity more specifically. In the second part, I endeavour to explain the two main views that have been advanced to answer the four aforementioned questions. The first is the non-naturalist view that asserts that there is a specific kind of objectivity for law. The non-naturalist positions in legal philosophy should not be confused with the non-naturalist view famously advocated by G.E. Moore and amply discussed in the meta-ethical literature. Rather, non-naturalism in legal philosophy is defined in negative terms as a position in which legal and moral facts are not continuous with scientific facts. Two positions can be identified within the non-naturalist view. First, the 'methodological'

non-naturalist position advanced by Gerald Postema argues that objectivity is a method and that the task, therefore, is to articulate the most plausible method to ground legal objectivity. Second, the 'substantivist' non-naturalist view advances the idea that the objectivity of law can only be grounded in substantive legal and moral arguments. Arthur Ripstein and Ronald Dworkin advocate this position. The second view is naturalism, which argues that there is continuity between law and science. Two positions within naturalism can be identified. First, naturalized jurisprudence advanced by Brian Leiter denies that there are moral facts and aims to show that there are legal facts minimally construed. Second, moral and legal realism is advocated by Michael Moore and David Brink. They aim to show both that there are robust legal and moral facts, and that moral truths are part of the truth conditions of legal judgements. In the final section of this study, I evaluate naturalism and non-naturalism in law and consider the future of the debate and its relevance for understanding the connection between law, morality and legal normativity.

2. *Non-naturalism and objectivity in law*

The non-naturalistic view, in general, recognizes the prescriptive or normative character of legal and moral values. However, it rejects the idea that we can locate legal and moral values in the physical[1] world. It gives priority to our common sense appearances or responses towards legal and moral values. What are these common sense responses and why do not they fit into the physical world? According to this view, called the 'irreducibility of the subjective', the 'practical' or 'internal' standpoint or the first-person perspective of the agent or subject in considering legal and moral values is privileged over the objective, external or third-person point of view. The irreducibility thesis has one core corollary. Legal facts cannot be reduced to scientific facts or known through scientific methodology. One option is to conceive of a method of inquiry different from scientific methodology yet still ensures that our judgments in morality and law are free from our desires, wants, dispositions, character, biases and prejudices. This is the approach of 'methodological non-naturalism'. Alternatively, the criteria of legal objectivity could be derived from substantive moral criteria (assuming that moral facts are also irreducible). This is the second position within non-naturalism, called 'substantive non-naturalism'.

2.1 METHODOLOGICAL NON-NATURALISM

According to the irreducibility thesis, this scientific model of causality cannot explain appearances or responses that are typical of legal and moral judgements. The normativity or prescriptivity of legal and moral claims must belong to a different domain from causally explanatory physical facts. Rational intuitionism claims that this realm and its nonphysical (nonscientific) properties are derived from *a priori*, nonempirical truths. Moral truths, like logical truths, are self-evident (Finnis, *Natural Law and Natural Rights*). However, this solution is epistemically and metaphysically problematic as it raises the question of how through mere reflection or through the simple act of reason, how on mere *thinking* about it, one is able to identify properties or facts that are nonphysical and objective. The interaction of the physical with the nonphysical world becomes an intractable problem (Dworkin, 'Truth and Objectivity: You'd Better Believe It'; Mackie, *Ethics: Inventing Rights and Wrong*). This metaphysics is therefore criticized in contemporary work (Sturgeon, 'Ethical intuitionism and ethical naturalism') and famously come under attack in Rawls's Theory of Justice (Rawls, *Theory of Justice*). NeoKantian metaethics, following Rawls (Scanlon, *What we Owe To Each Other* and Korsgaard, *Creating the Kingdom of Ends*

and *Sources of Normativity*), takes a different turn. It aims to show that the Kantian aspiration of objective moral values can be validated without its metaphysics and advances a constructivist approach in which there is a process or method that guarantees both the normative and the objective character of values. In legal philosophy, this process has inspired authors such as Postema, who has advanced the model of public practical reason as the most adequate method to achieve the objectivity of law and morality (Postema; 'Public Practical Reasoning: An Archeology'). Postema rejects the scientific and empirical method as the paradigm of all kinds of objectivity and asserts that the nature of objectivity depends on the specific domain (Postema 100, 'Objectivity Fit for Law'). Postema also rejects metaphysical or semantic projects of legal objectivity and asserts that metaphysical objectivity is irrelevant to objectivity in the practical domain; i.e. law and morality. Thus, the mistake of metaphysics, he tells us, lies in insisting that there is one single kind of objectivity for all domains.

'Why is objectivity important in the domain of morality and law?' asks Postema. He asserts that legal norms guide action and that through this guidance law is able to coordinate our social interaction. But what does it mean to say that law guides our actions? According to Postema, it means that law tells what we ought to do *qua* judges, *qua* citizens or *qua* legal participants in general. The guiding role of the law can only be fulfilled if it is free from contingency and arbitrariness; that is, if it is free from biases, prejudices, desires and wants. For Postema, legal reasoning is a kind of public practical reasoning and objectivity is the method of public practical reasoning that ensures that decisions and conclusions in law can be reached without biases, prejudices, character, dispositions, inclinations, desires and so on (Postema 117, 'Objectivity Fit for Law'). Consensus or agreement based on public argument is at the centre of the notion of objectivity (Postema 120, 'Objectivity Fit for Law'). Thus, consensus is the regulatory ideal in legal objectivity (Postema 120, 'Objectivity Fit for Law').

Postema rejects *radical* domain specificity and advocates *modest* domain specificity. In the former, '*for every domain of discourse there is a conception of objectivity tailored to it and valid for it*' (Postema 100, 'Objectivity Fit for Law'). In the latter, the structuring features of objectivity run across the different domains; however, it is still possible to have specific conceptions of objectivity that depend on the specificity of the subject matter. Postema identifies three common structuring features, *independence, correctness* and *invariance*. *Independence* means that the subject matter transcends the subjectivity of the judging subject (Postema 105, 'Objectivity Fit for Law'**)**. But this characterizing feature might not be very helpful if we do not have a clear concept of subjectivity. Postema seems aware of this difficulty and raises the following question: if we think about independence from *something*, how shall we define or determine such independence*?* (Postema 106, 'Objectivity Fit for Law'). However, he does not provide a satisfactory answer. He suggests that the answer needs to be determined by the *nature* of the domain and its subject matter. In this way, he relativizes the concept of independence to a specific domain. Postema believes that the answer concerning independence can neither be provided by the concept of objectivity nor by any metaphysical presupposition. This is an uninformative structuring feature. One could say, for example, that, in physics, we have independence from our beliefs; in morality, we pursue independence from our desires and character; and, in law, we try to pursue independence from our biases and prejudices. It seems, consequently, that the general concept of independence has been watered down to specific domain independence and therefore the contrast between *radical* and *modest* domain specificity has almost vanished. The second structuring feature is correctness, which means that '*there are standards by which the judgement can be assessed, that these standards are*

not met merely by the fact that one believes or holds that they are, and that the judgement meets them' (Postema 107, 'Objectivity Fit for Law'). Three corollaries, according to Postema, follow from the feature of correctness: (i) the possibility of mistake; (ii) in the case of theoretical knowledge, i.e. science, conclusions are reached on the basis of evidence, whereas in the evaluative or practical domain, i.e. law and morality, conclusions are reached on the basis of reasons (Postema 107, 'Objectivity Fit for Law'); and (iii) the possibility of agreements and disagreements according to evidence or reasons, depending on whether the domain is practical or theoretical. The structuring feature of correctness is different for theoretical and practical domains. We should point out, however, that the standards of correctness vary across the multiple domains and therefore this characteristic makes the boundaries between *radical* and *modest* domain-specific objectivity more difficult to demarcate. The third structuring feature, according to Postema, is invariance across judging subjects. Postema resorts to the idea of intersubjective invariance, but once again this intersubjective invariance depends on the *nature, tasks and modes of inquiry* of *particular* domains (Postema 109, 'Objectivity Fit for Law'). In my view, modest domain specificity collapses into radical domain specificity.

2.2 SUBSTANTIVE NON-NATURALISM

We now turn to examine the second view within non-naturalism in legal philosophy which is advocated by Arthur Ripstein and Ronald Dworkin. This view might also be called a 'substantivist' conception of legal objectivity. In ethics, Frankena's 1960s text 'On Defining Moral Judgments, Principles and Codes' identified the shift from metaethics to substantive moral arguments. However, a more robust formulation in law is found in Dworkin and Ripstein. Ripstein, like Dworkin, rejects the idea that causal independence is the key feature to determine objectivity in the evaluative domain. Ripstein asserts that there is no ontological or metaphysical issue implicit in our inquiries into practical thought (Ripstein 'Questionable Objectivity'), and argues that objectivity in the evaluative realm does not involve freedom from contingency. Therefore, it is not necessarily the case that when we disagree, one of the parties is mistaken (Ripstein 364, 'Questionable Objectivity'). In this way, he is rejecting the view that there are genuine disagreements in morality and law and the notion that one party in a dispute has to be right and the other wrong. He claims that objectivity in evaluative inquiries should focus on 'endorsement independence'. This means that there are standards of rationality and appropriateness of reasons according to the specific circumstances, i.e. cultural and social. What makes a legal or moral judgement objective is that it satisfies the appropriate reasons or standards independently of the individual's endorsement. However, Ripstein warns us: a concept of objectivity cannot *a priori* identify the appropriate standards, only *substantive* moral and legal arguments can establish these standards (Ripstein 363, 'Questionable Objectivity'). For example, Ripstein argues, a judge that sentences natives for longer periods than whites for the same crimes in the same circumstances has not chosen an appropriate moral standard. The moral standard should be chosen by arguing substantively, e.g., on the basis of a principle that persons should be treated equally. If the judge's endorsement is the only ground of a moral standard, then it lacks objectivity. Dworkin takes the same line of argument and asserts that only substantive moral arguments can support other moral arguments. Dworkin rejects the metaethical enterprise that relies on arguments that are external to substantive first-order moral propositions. Metaethics aims to answer questions concerning the status of first-order moral propositions. Questions such as what determines the truth conditions of first-order moral propositions, whether there are moral facts and/or moral

properties in the universe and how we know them and so on, are part of the field of metaethical reflection. He calls these endeavours 'Archimedean views' as they aim to either reject the objectivity of morality (Dworkin 112–6, 'Truth and Objectivity: You'd Better Believe It') or support the objectivity of morality by relying on metaphysical or philosophical arguments (Dworkin 101–12, 'Truth and Objectivity: You'd Better Believe It'). He argues that these metaphysical and philosophical further claims cannot, contrary to their pretence, be neutral concerning substantive moral claims. For Dworkin, all these metaphysical and further philosophical claims can either be translated into substantive moral claims or be shown to be unintelligible. Like Ripstein, Dworkin believes that objectivity in morality and law can only be found within *substantive moral and legal* claims. However, unlike Ripstein, Dworkin advocates the idea that legal disagreements are genuine theoretical disagreements (Dworkin 3–15, *Law's Empire*). Thus, for example, two parties might have a dispute over whether a judge ought to compensate a victim of psychiatric injury. If one party 'A' of the dispute denies that the claimant ought to be compensated and another party 'B' believes that the victim ought to be compensated, for Dworkin, both parties cannot be right. Either 'A' is wrong and 'B' is right or vice versa. In contrast, for Ripstein, 'A' and 'B' can both simultaneously be right or wrong. Dworkin faces some problems in attempting to justify the idea of *genuine* theoretical disagreement by merely claiming that substantive first-order arguments provide sufficient stability and a common subject matter to ground such disagreement. For example, suppose we can substantively disagree over whether one should be compensated for psychiatric injury only in cases where the consequences are foreseeable. What would guarantee that this is not just a dispute over our *biased* substantive views about 'psychiatric injury'?. How should we demarcate a 'genuine' disagreement from a disagreement over preconceptions or biases about the notion of 'psychiatric injury'. Is it not the case that Dworkin would need to presuppose some kind of moral realism that would guarantee that such disagreements are genuine? (V. Rodriguez-Blanco, 'Genuine Disagreements: A Realist Reinterpretation of Dworkin'). Not surprisingly, Ripstein takes another route by affirming that 'A' and 'B' can be both right or wrong. Following his notion of objectivity as 'independence endorsement', 'A' can choose an appropriate moral standard such as 'it is fair to compensate all injuries suffered by a victim as long as they are reasonably foreseeable by the defendant', whereas 'B' could choose a different but still appropriate moral standard such as 'there are different kinds and degrees of injuries and it is fair that compensation for damages to the victim should reflect such differences in kind and degrees of injury'. 'B' will conclude that 'physical injury' and 'psychiatric injury' are not equal and therefore the victim of psychiatric injury should not be compensated. In contrast, 'A' will conclude that the victim of psychiatric injury should be compensated. For Ripstein, there is no 'genuine' disagreement and, in the example, both 'A' and 'B' are right. If we follow Ripstein's views, it seems that the notion of objectivity plays no role in enabling the identification of 'error' or 'mistaken views' in legal and moral judgements. Considering that a core function of the notion of objectivity is to demarcate correct judgements from mistaken judgements, Ripstein's view is unsatisfactory as his notion of objectivity cannot perform one of its core functions. On the other hand, it is unclear how Dworkin's deflationist and substantivist conception of objectivity can perform the aforementioned core function without presupposing either moral realism or moral cognitivism which will inevitably involve, *contra* Dworkin's views, an engagement with metaethical reflections.

At the outset of this study, we considered four core questions to be used to guide us through the labyrinth of the different theoretical positions. The way non-naturalists answer these questions will now become apparent. To the first question on whether

moral and legal values are objective, both methodological and substantivist non-naturalists assert that we are able to grasp moral and legal values independently of our biases, prejudices, character, personal preferences, dispositions, desires and so on. According to Postema, this can be achieved through public rational deliberation whereas Dworkin and Ripstein assert that we can do this within substantive moral argumentation. Responses to the second question raise the issue of the relationship between moral and legal values. Postema does not explicitly explain the relationship between moral and legal values and neither does Ripstein. Nevertheless, we might conclude that, for Postema, the relationship between legal and moral values is determined by practical rational deliberation. Similarly, we conclude that, for Ripstein, this relationship is determined by substantive legal and moral arguments. In contrast, Dworkin has explicitly advocated the view that the connections between moral and legal values should be through his own interpretive theory (Dworkin, *Law's Empire*). To the third question of whether we should consider a domain-specific conception of objectivity for legal values, both methodological and substantivist non-naturalists assert that the objectivity of law can only be conceived in terms of its specific domain, as it follows trivially from the irreducibility thesis that they defend. As to the fourth question on whether legal values correspond, at least in part, to legal facts and properties and their possible place in the 'disenchanted' physical world, both methodological and substantivist non-naturalists assert that there is no correspondence between legal values and legal (natural) properties.

Two criticisms can be levelled against both versions of non-naturalism. First, the power or resonance of the concept of objectivity has been minimized and moral and legal objectivity have been reduced to either 'method' or 'substantive' argumentation. Non-naturalists have changed, somehow, the concept of objectivity. There are no common structuring features of objectivity, or the structuring features are so ambiguous that one could legitimately suspect that we are referring to different concepts. Second, theorists such as Dworkin (*Law's Empire*) and Rosatie ('Some Puzzles About the Objectivity in Law') have appealed to the importance of explaining theoretical disagreements in law. To the extent that non-naturalists aim to preserve appearances and the phenomenology of our responses, Ripstein, Dworkin and Postema fail to account for our response concerning genuine disagreements in law together with our *critical* claims concerning what the law is. For example, suppose two judges disagree on what the law is or, assuming that *Plessy* was never overturned, we claim that 'The law is *Plessy*, but *Plessy* was *wrongly* decided'. Neither methodological nor substantivist non-naturalists positions give an adequate account of (1). The former changes the concept of objectivity, and the claims of correctness and error become tailored to the specific domain. Therefore, (1) is transformed into (1′) 'Plessy is law, but it was wrongly decided, according to *our* standards of publicly constructed reason' that is, according to the standards that *we* the *majority* have agreed upon through a process of public practical deliberation. On this view, the ideal is consensus rather than truth or objectivity. Substantivist non-naturalism transformed (1) into (1″) '*Plessy* is law, but it was wrongly decided, according to our *current* moral substantive arguments', i.e. according to our own *current* moral convictions as there is nothing else to look into. Both alternatives seem unsatisfactory.

3. *Naturalism and Legal Objectivity*

The naturalistic view argues that there is continuity between scientific and evaluative inquiries. Two different conceptions can be identified within the naturalistic view: moral and legal realisms and naturalized jurisprudence.

3.1. NATURALIZED JURISPRUDENCE

Naturalized jurisprudence is advocated by Leiter (*Naturalising Jurisprudence*), who, contrary to the conception of moral and legal realisms, rejects the idea that moral facts figure in the 'better' explanation of the world (Leiter, *Naturalising Jurisprudence*). According to Leiter, two criteria provide the test of the 'better' explanation: consilience and simplicity. Consilience is about how much a theory explains. Thus, if theory A explains more facts than theory B, then A is more consilient than B. Simplicity is a theoretical virtue as long as it does not cause any detriment to consilience. Consequently, theory A is better than theory B if A explains more facts with greater or comparable simplicity than B. Leiter toys with the idea that morality can be explained in terms of evolutionary biology or Freudian psychoanalysis and that these theories provide a satisfactory balance of the criteria for a 'better' explanation. He concludes, after rejecting claims of supervenience and identity between moral and physical facts together with other attempts to vindicate the place of moral facts in our 'better' explanations, that moral facts, and therefore natural moral realism, should be rejected on explanatory grounds. However, Leiter argues that there might be legal facts that are either modestly objective, which means that X is a legal fact if under ideal conditions lawyers and judges takes it to be a legal fact, or minimally objective, namely that X is a legal fact if the community of lawyers and judges take it to be a legal fact (Leiter, *Naturalising Jurisprudence*). Leiter favours minimal objectivity as strong and modest objectivity involve the idea that there are reasons provided by the law that the participants do not know. The concept of law, Leiter tells us, is normative or reason-giving, which means that we should be able to know the reasons given by the law. This can only be warranted, however, if we advocate minimally objective legal facts because '*(1) communal consensus is constitutive of legal facts and (2) such consensus is necessarily accessible to that community*' (Leiter 271, *Naturalising Jurisprudence*).

We might object that there is a tension between the idea that moral facts can be explained away by evolutionary biology and Leiter's proposal that there are minimally objective legal facts. Why should legal facts not follow the fate of moral facts? Why should we not apply scientific methodology all the way down and explain away legal using sociobiological theories? At the beginning of his book *Naturalised Jurisprudence*, Leiter provides a caveat: '*no responsible naturalised jurisprudence can eliminate the normative aspects of law and legal systems*' (Leiter 4, *Naturalising Jurisprudence*) But the question that then arises is how to understand normative facts (legal or moral) in a naturalistic world? Leiter points out that his naturalism is methodological, but not ontological (p. 4) and that because of pragmatic reasons we should be guided by science. '*The real argument for embracing a scientific epistemology, however, is not itself epistemic but pragmatic: such epistemology, as noted earlier, has delivered the goods*' (Leiter 275, *Naturalising Jurisprudence*). He argues that science has shown that 'it works', and therefore that science should be our paradigm for understanding and explaining the world. He explicitly points out that there is no need to postulate putative facts given that scientific methodology is an useful guide to the true and the real already in hand. '*The real question about any putative facts is whether they can answer to our best-going criteria of the knowable and the real*' (Leiter 274, *Naturalising Jurisprudence*) If this is the case, then why not search for better scientific explanations of our legal conventions and practices, considering that sociobiological or psychological scientific theories, most likely, will more successfully satisfy the criteria of simplicity and consilience than any conventionalist theory or minimalist theory of legal facts? Let us illustrate the criticism with an example. In legal community 'x' all the legal participants accept the primary rule that victims of psychiatric injury should be compensated. This rule is grounded

on another rule, a secondary rule; i.e. a rule of recognition, which is part of the *communal consensus* of the community. Following Leiter, this secondary rule will probably constitute a minimally objective legal fact. However, following the scientific methodological view advocated by Leiter, the naturalized methodologist could provide sociobiological or psychological scientific theories that will explain the way in which a *communal consensus* depends on the mental states of the participants. If the provided scientific theories are sound, minimally objective legal facts will play no explanatory role as the work will be performed by our scientific understanding of the mental states of the participants. However, Leiter seems to deny this second level of explanation by introducing minimally objective legal facts and he is satisfied to stop the inquiry at the level of *communal consensus* as constitutive of legal facts. Nor does he advance arguments that provide a justification for stopping our inquiry at the level of such minimal legal facts.

3.2. MORAL AND LEGAL REALISM

The second position within naturalism is the moral and legal realism advanced by David Brink and Michael Moore. For Brink and Moore, moral realism is the best explanation of our moral inquiry and deliberation (Brink, *Moral Realism and The Foundations of Ethics*; Moore, 'Moral Reality Revisited'). They also defend a coherentist moral epistemology, which is, in their view, the best epistemic explanation of our metaphysical or ontological commitments. Brink aims also to defend moral realism from traditional philosophical attacks – such as the idea that there is a gap between 'is' and 'ought'. Brink challenges this criticism and argues that moral facts are constituted by natural facts and that the isought gap does not undermine moral realism as it is as problematic and controversial as the isis gap. This defence strategy has been called 'a companions in guilt' strategy (Mackie, *Ethics: Inventing Right and Wrong*). In other words, the idea is to establish parallels between moral and theoretical facts, moral and epistemic facts, and argue that if problems arise for moral facts, equal difficulties arise for theoretical or epistemic facts. Consequently, Brink tells us, the objection that there is an isis gap and an isought gap is a challenge not only to moral realism, but also to realism about physical, biological, social and natural properties (Brink, *Moral Realism and the Foundations of Ethics*). Brink and Moore extend moral realism to law and argue that the truth of legal judgements corresponds, in part, to the truth of moral judgements, and that the truth of moral judgements is determined by moral facts. They also defend a naturalist theory of interpretation (Brink, 'Legal Theory, Legal Interpretation and Judicial Review' and Moore, 'A Natural Law Theory of Interpretation'). Brink rejects the view that the meaning of a word is the set of identifying properties or descriptions which speakers associate with it. The main problem with this view, according to Brink, is that it cannot explain genuine disagreements in law (Brink 113, 'Legal Theory, Legal Interpretation and Judicial Review'). He argues for an alternative view, following Putnam (*Mind, Language and Reality*), and he defends the idea that our best available relevant theories will provide us with our best access to the real nature of whatever our words refer to (Brink 118, 'Legal Theory, Legal Interpretation and Judicial Review'). Therefore, objectivity in law, according to moral and legal realism, is determined by the real nature of what our legal and moral words refer to. Patterson has criticized this view (Patterson, 'Realist Semantics and Legal Theory' and 'What Was Realism? A reply to David Brink') and asserts that Brink's use of the term 'real' might involve the idea of 'the way the world is'. He provides a counterexample, which shows that the idea of 'real' does not make much sense in understanding the nature of law and its interpretation because law is an institutional practice rather than a natural kind detectable by scientific investigation. Patterson's counterex-

ample is as follows. Suppose that there is a statute written in 1945 that prohibits fishing within 50 miles of a shore. Following Brink, it is an objective legal fact that, since whales and dolphins are not fish, dolphins and whales are not protected under the statute. However, we know from the preamble of the statute that it was passed to prevent the extinction of all forms of fish, including whales and dolphins (Patterson 1989a, 'Realist Semantics and Legal Theory'). Patterson concludes that the application of Brink's semantic realism results in an absurd outcome.

We began our inquiry with four questions. To the first question of whether moral and legal values are objective, both kinds of naturalism respond positively. To the second question on the nature of the relationship between legal and moral values, naturalized jurisprudence rejects the position that there are moral facts, but asserts that there are 'minimally objective' legal facts. Moral and legal realists assert that legal facts correspond, at least in part, to moral facts. For moral and legal realists there is no domain-specific conception of legal objectivity and hence they might find it difficult to explain satisfactorily the conventional or social features of law. Leiter's naturalized jurisprudence is able to provide a more successful explanation of the social or conventional features of law since he defends minimal objective legal facts, but it is difficult to envisage within Leiter's naturalized jurisprudence a satisfactory explanation of the critical claims of law; i.e., the reason-giving, normative or authoritative character of law.

All of these different theoretical perspectives have enriched the landscape of legal objectivity and have shown various possible paths to understanding legal objectivity. We have now, certainly, a better understanding of legal objectivity than 40 years ago; however, further steps towards more comprehensive explanations are needed.

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Short Biography

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Notes

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[1] I will use the term 'physical' as interchangeable with the term 'natural'. The emphasis is on the possibility of determining the empirical conditions of such facts.

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Author Query Form

Journal: PHC3

Article: 283

Dear Author,
During the copy-editing of your paper, the following queries arose. Please respond to these by marking up your proofs with the necessary changes/additions. Please write your answers on the query sheet if there is insufficient space on the page proofs. Please write clearly and follow the conventions shown on the attached corrections sheet. If returning the proof by fax do not write too close to the paper's edge. Please remember that illegible mark-ups may delay publication.

Many thanks for your assistance.

Query reference	Query	Remarks
Q1	**AUTHOR: Please supply an abstract for this paper.**	
Q2	**AUTHOR: The year (1960) does not match with the year (1976) in the reference list. Please check.**	
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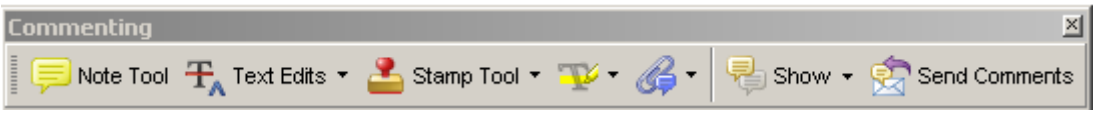
Q18	**AUTHOR: Please provide the department, postal code and email for the corresponding author.**	

USING E-ANNOTATION TOOLS FOR ELECTRONIC PROOF CORRECTION

Required Software

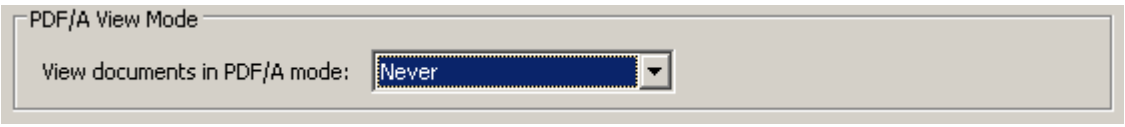
Adobe Acrobat Professional or Acrobat Reader (version 7.0 or above) is required to e-annotate PDFs. Acrobat 8 Reader is a free download: http://www.adobe.com/products/acrobat/readstep2.html

Once you have Acrobat Reader 8 on your PC and open the proof, you will see the Commenting Toolbar (if it does not appear automatically go to Tools>Commenting>Commenting Toolbar). The Commenting Toolbar looks like this:



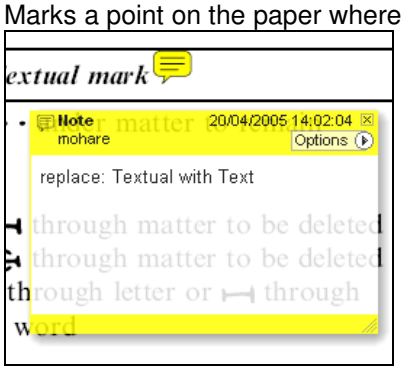
If you experience problems annotating files in Adobe Acrobat Reader 9 then you may need to change a preference setting in order to edit.

In the "Documents" category under "Edit – Preferences", please select the category 'Documents' and change the setting "PDF/A mode:" to "Never".



Note Tool — For making notes at specific points in the text

Marks a point on the paper where a note or question needs to be addressed.

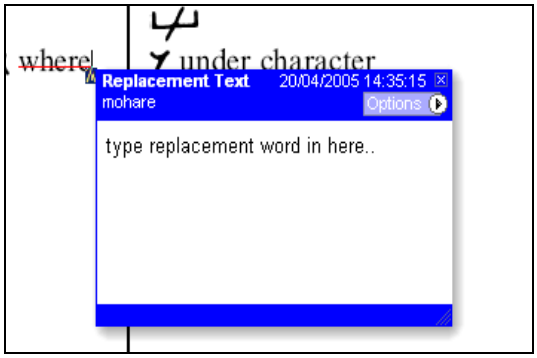


How to use it:

1. Right click into area of either inserted text or relevance to note
2. Select Add Note and a yellow speech bubble symbol and text box will appear
3. Type comment into the text box
4. Click the X in the top right hand corner of the note box to close.

Replacement text tool — For deleting one word/section of text and replacing it

Strikes red line through text and opens up a replacement text box.

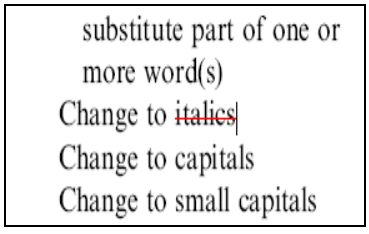


How to use it:

1. Select cursor from toolbar
2. Highlight word or sentence
3. Right click
4. Select Replace Text (Comment) option
5. Type replacement text in blue box
6. Click outside of the blue box to close

Cross out text tool — For deleting text when there is nothing to replace selection

Strikes through text in a red line.



How to use it:

1. Select cursor from toolbar
2. Highlight word or sentence
3. Right click
4. Select Cross Out Text

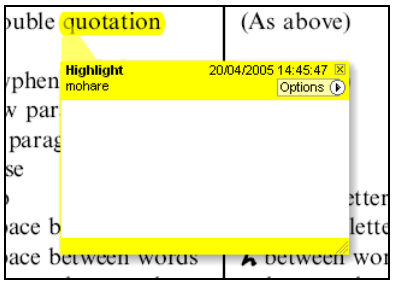
Approved tool — For approving a proof and that no corrections at all are required.

How to use it:

1. Click on the Stamp Tool in the toolbar
2. Select the Approved rubber stamp from the 'standard business' selection
3. Click on the text where you want to rubber stamp to appear (usually first page)

Highlight tool — For highlighting selection that should be changed to bold or italic.

Highlights text in yellow and opens up a text box.

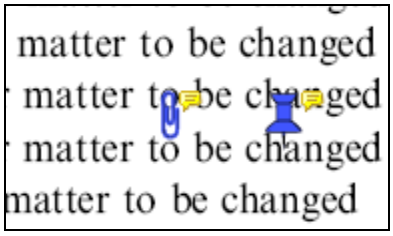


How to use it:

1. Select Highlighter Tool from the commenting toolbar
2. Highlight the desired text
3. Add a note detailing the required change

Attach File Tool — For inserting large amounts of text or replacement figures as a files.

Inserts symbol and speech bubble where a file has been inserted.

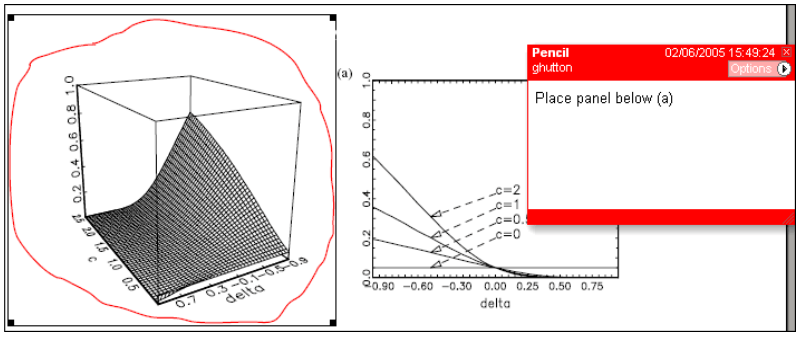


How to use it:

1. Click on paperclip icon in the commenting toolbar
2. Click where you want to insert the attachment
3. Select the saved file from your PC/network
4. Select appearance of icon (paperclip, graph, attachment or tag) and close

Pencil tool — For circling parts of figures or making freeform marks

Creates freeform shapes with a pencil tool. Particularly with graphics within the proof it may be useful to use the Drawing Markups toolbar. These tools allow you to draw circles, lines and comment on these marks.



How to use it:

1. Select Tools > Drawing Markups > Pencil Tool
2. Draw with the cursor
3. Multiple pieces of pencil annotation can be grouped together
4. Once finished, move the cursor over the shape until an arrowhead appears and right click
5. Select Open Pop-Up Note and type in a details of required change
6. Click the X in the top right hand corner of the note box to close.

Help

For further information on how to annotate proofs click on the Help button to activate a list of instructions: