

TOWARDS A PRAGMATIC UNDERSTANDING OF LAW: PROMOTING LEGAL POSITIVISM AS A META-PHILOSOPHY OF LAW AND ITS IMPLICATIONS FOR ABORTION RIGHTS

AFNAAN A. QURESHI

Abstract

Foreword

§ 1. Introduction

§ 2. Natural Law Theory

§ 2.1. Incorrect Assumptions of Natural Law Theory

§ 3. Legal Positivism

§ 3.1. The Priority of Legal Positivism

§ 3.2. The Separation Thesis

§ 3.3. Legal Positivism Approves of the Right to Abortion

§ 3.4. The Prima Facie Risks of Legal Positivism

§ 3.5. Legal Positivism Allows for General Laws

§ 4. Conclusion

ABSTRACT

This paper concerns the overturning of *Roe v. Wade* and the right to abortion. The discussion focuses on how we perceive the legal system as a means to present legal positivism as the better alternative to natural law theory. The false presupposition of a moral framework in law leads to the nature of legal debate focusing on a difference in moral schemas; morality is the strawman of our legal system.

Foreword

It is important to consider legal positivism and natural law theory as meta-positions because they represent fundamentally different approaches to understanding the relationship between law and morality. Legal positivism sees law as a social construct separate from morality, while natural law theory posits that law is grounded in morality and natural law. Understanding these meta-positions is vital because they shape our understanding of the nature and purpose of the law, as well as how we approach legal questions and debates.

In this paper, I explore the significance of legal positivism and natural law theory as meta-positions in American political society. Legal positivism provides a pragmatic solution to the issue of political polarization in the United States, in contrast to the more abstract approach of natural law theory. Legal positivism's focus on the formal aspects of law, rather than its moral content, can help depoliticize legal debates and promote a more objective and rational approach to policymaking.

I also address the criticisms that legal positivism faces, such as the charge that it is overly formalistic and divorced

from moral considerations. However, these criticisms are based on a misunderstanding of legal positivism's goals and methods. A more nuanced understanding of the position can address these concerns.

§1. Introduction

The constitutional status of *Roe* currently is null; however, presenting a case in favor of legal positivism compels our society to accept the right to abortion as constitutional. The permeation of natural law theory into the contemporary perspective supplies the foundation for the overturn of *Roe*; rejection of natural law theory is a necessary condition for the reinstatement of *Roe* constitutionally. The conflation of morality with the law is a fallacy because it assumes that moral facts exist and can be directly translated into legal rules. This is incorrect *and* dangerous because it can lead to the imposition of a particular moral perspective on others without justification. It is essential to recognize that moral values and legal rules are distinct and should be based on different considerations. While moral values may inform legal rules, they should not be equated with them, as the law has its criteria

for validity and legitimacy, which may differ from those of morality. By arguing for legal positivism, we can demarcate a code of laws from a framework of ethics to combat polarizing and militant political perspectives that lose sight of the nature of law. This piece will present the case for natural law theory and its effect on the judiciary process in the overturn of *Roe*, dismantle its platform, and introduce legal positivism along with why it promotes the reinstating of *Roe*.

§2. Natural Law Theory

The conception of natural law theory is the brainchild of St. Thomas Aquinas, answering the following question.: how does God expect all human beings to pursue the good when it is the case that not all human beings are aware of God's word (i.e., the scriptures)?¹ The creation of the world and human society follows a set of natural laws that rationally determine the best way to pursue the good. Natural law theory presupposes a moral framework as a means to define a system of laws; the human inclination towards the good identifies the

¹ Grisez, Germain G. The first principle of practical reason: A commentary on the *Summa Theologiae*, 1–2, Question 94, Article 2. Translated by Anthony Kenny, London, 1969.

conditions of the legal system. What the law ought to be outlines what the law *is*. Because the law ought to be, according to Aquinas, a proponent of the good, it is so when a law embodies the good that it may only be a law. Aquinas asserts that the legal standing of a law is insufficient for its being a law, but instead, that the inherent tools God instills within the human being must rationally determine a law by deriving it from the basic goods. The human being inherently pursues the seven basic goods because that is the way in which God programs the human being, a universal proposition which sounds promising. For Aquinas, the seven basic goods are life, reproduction, education of offspring, seeking God, living in society, avoiding offense, and shunning ignorance. Opposition to any law we may derive from the basic goods results from ignorance or emotionality. Each of the *basic goods* represents an explanation for one's motivation to want the good because God wants human to want what is good. To go against the basic goods is to want the bad, which directly conflicts with the inherent inclination that God implants into the human being. Natural law theory is *prima facie* a convincing framework in the actualization of law. If every citizen wants the good,

because God programs human with an inclination to want the good, then it seems that we can define a legal system that encourages the flourishing of all rational human beings. The human being who goes against the natural law is not a true agent, for they allow emotion to drive their desires instead of reason.

How does emotion counter the programming of God? We may find this notion of programming insufficient, for not everyone pursues the good as Aquinas defines it. A lack of reason, or rationality, ultimately hinders one from following the inclination towards the good. Natural laws are derivable, according to Aquinas, by employing rationality. The presupposition follows that those who are not pursuing the good are not truly rational agents and are instead those who survive in between emotional states. Emotional states are void of rationality by acting as a subversion of critical reflection. According to the work of Frankfurt(p. 13), the notion of critical reflection is valuable to what constitutes a true agent. I am relating the utilization of emotional states as an escape from critical reflection; the agent prioritizes the experience of emotional states, identifying with those emotional states more

than identifying with the rational self. Emotional states are irrational and can prevent individuals from making rational decisions, hindering their pursuit of the good. When emotions take over, the ability to reason is lost, emphasizing the importance of controlling emotions to promote rational decision-making.² Furthermore, natural law theory assists in the identification of incorrect laws which go against the moral standard of pursuing the good. For example, administering care to those in need, like providing shelter to the homeless or feeding the hungry, is a facet that natural law theory encourages. As human beings, we pursue both our survival and the survival of others as a means to foster a healthy society; we may derive feeding the hungry as a law from the *basic goods* of life and reproduction. By feeding the hungry, we are enabling their pursuit of life and, by extension, reproduction. Natural law theory encourages human to consider others' well-being by imposing the notion that all actors of society are conjointly pursuing the good. However, any actors that go

² The compatibilist perspective on the nature of mental states holds that while emotional states are irrational, deciding when and how to engage with them is rational. This perspective serves as a bridge between metaphysical naturalism and libertarian free will.

against the pursuit of good are the responsibility of those pursuing the good to correct because those who go against the good do so irrationally out of ignorance or emotionality. From the perspective of natural law theory, it is vital that the legal system of society directly follows from a derivation of the basic goods so that its citizens, who are merely following the law, by extension, pursue the good. Natural law theory denotes that laws that promote the bad are not, in fact, laws; slavery, the oppression of women, and Jim Crow laws are not valid laws according to natural law theory because they promote the bad.

Similarly, in Thomas Aquinas' view, the right to abortion is not a true law. The basic goods of life and reproduction, which encourage the feeding of the hungry, strongly oppose abortion because it constitutes the abolishment of life and the inverse of reproduction. Aquinas would reason that those who facilitate abortion do so out of emotionality. Those who desire abortion go against the good, and it is the obligation of others within society to rectify and educate the blasphemer. Any law that violates fundamental moral principles can be subject to legal controversy, not just laws concerning abortion. The emphasis is not to discriminate

but rather to nurture and enlighten fellow citizens so that they also labor toward the good. The genesis of law from an intrinsic moral framework promotes unity and allows for the identification of irrational persons as a means to correct their ignorance or emotionality. If what is legal is also what is morally good, then it shall be elementary for citizens to pursue the good solely by following the law. Conflating law with morality generates an imperative for the citizens to follow the law and will result in an overall more beneficial society by aligning the moral concerns of its citizens with that of society.

§2.1. Incorrect Assumptions of Natural Law Theory

Indeed, there are several incorrect assumptions that the *natural law theory* asserts as factual. First and foremost, how can we assume that the human perspective of the good aligns with the notion that God employs? Acceptance of the good as God defines it is a terrifying first step that a person takes into the relinquishment of agency, for it is akin to identifying the self as incapable of rational thought. In order for God to act as the moral authority, we must absolve ourselves of any moral intuition since God knows what the good is and we do not. I

challenge Aquinas' notion of ignorance because it ironically applies mainly to those whom he identifies as rational. Aquinas proclaims that the rational agent employs the basic goods as a means to derive law; however, that assertion is false. A rational agent ought to employ rational reasoning as a means to derive law, not some arbitrarily chosen set of moral conditions. Those who relinquish moral agency are incapable of making rational decisions within the bounds that they accept.

{Interjection} The Role of Moral Agency; What is it, and why do we care?

Moral agency refers to individuals' ability to make moral judgments and decisions based on their moral beliefs and principles. When individuals relinquish their moral agency, they relinquish their ability to make moral judgments and decisions and instead rely on external sources to dictate their actions and beliefs. This can lead to a lack of critical thinking and reasoning, as well as a dependence on authority figures or societal norms to guide behavior. In the context of legal theory, the concept of moral agency is important because it influences how individuals interpret and apply laws. Natural

law theory assumes that individuals should adhere to a universal moral code, regardless of their personal beliefs or circumstances. Such an adherence can lead to a rigid interpretation of laws (for example, originalism) and a lack of consideration for individual autonomy and agency.

In the case of the right to abortion, legal positivism allows for a more inclusive approach to interpreting laws related to reproductive rights. It recognizes that individuals have different moral beliefs and values and, thus, should be allowed to make their own decisions regarding their reproductive health. On the other hand, natural law theory assumes a universal moral code that prohibits abortion, regardless of individual circumstances or beliefs.

Therefore, when individuals relinquish their moral agency, they become less capable of making rational decisions based on their own beliefs and values.

§2.1. [Continued]

Aquinas attributes rationality to those who relinquish moral agency and labels those that go against his arbitrary moral framework as ignorant. How does Aquinas have the

authority to determine that all who follow his arbitrary system are rational and those who rationally oppose his arbitrary system are ignorant? Christianity is the religious actualization of a superiority complex within the context of morality. By identifying God as the moral authority, Aquinas presupposes that those who accept this belief accept a moral truth; truth value is binary, and those who deny a truth are false. Natural law theory perpetuates a hive-mind mentality because it calls for relinquishing individual moral considerations as a means to accept an arbitrary framework of morals while rejecting those who do not conform; non-conformers are the enemy of the moral framework and, by extension, society. When discussing the issues with natural law theory in the context of abortion rights, one major issue is the irony of the theory promoting the development of individuals into a false-rational body, which in turn thrives on the alienation and dehumanization of all those who oppose its arbitrarily chosen ideology.

The following fundamental issue with natural law theory points to its current conflict with American legislation and its seemingly strong stance against progressive legal

reformation. The mere existence of written law suggests the incapability of the human being to harbor an inherent moral-basing legal framework as the result of rational considerations. Why, then, does there not exist a legal system that stands the test of the continuously evolving social landscape? Aquinas may refute this question by arguing that due to the false laws, all legal systems are equivocal in implementing into legislation. The eventual fall of these legal systems is the fault of false laws which enable a pursuit of the bad. Aquinas' argument is similar to the defense of communism, how the U.S.S.R. was not the perfect embodiment of such a system. What matters is not how the legal system ought to be, but rather how it is in practice. The way in which something ought to be is not a direct framework for how something *is*. Natural law theory may work flawlessly in practice. However, the conditions of such a society are preposterous: an entire society of mindless sheep with no individuality is one of the necessary and sufficient conditions for a true actualization of *natural law theory*. Furthermore, modern legislation directly conflicts with basic goods, such as the legalization of same-sex marriage.

In the society that Aquinas envisions, gay couples are ignorant blasphemers that require retribution and education. According to natural law theory, sexual relationships should only occur within heterosexual marriages, where the primary purpose of sex is procreation and the continuation of humanity. Any sexual activity that does not result in reproduction is immoral. Therefore, gay couples violate the basic goods of natural law theory because their sexual relationships cannot lead to procreation.

To Aquinas, people are straying from the proper moral framework. It is not that the government is failing its people; the people are failing their government. Natural law theory prohibits social and legal reform, strips citizens of individuality, and deceives citizens into believing a false moral framework by which to judge other citizens.

This manner of thinking permeates the conventional arena of polarizing politics subtly by equating the legal system with a personal moral framework. A fair case is made when comparing the conservative agenda with natural law theory as a means to understand its fundamental ideology as a basis for the overturn of *Roe*. Although natural law theory is not directly

the reasoning for the overturning of *Roe*, the pattern behind the dismissal of a false law is comparable. The right to abortion is a false law to those who base their political philosophy on natural law theory.

§3. Legal Positivism

Following a brief analysis of natural law theory, it is most appropriate to discuss legal positivism as the opposing perspective. My explanation and summary of legal positivism are attributable to the works of Hart and Joseph Raz (a contemporary scholar of the Philosophy of Law). Positivism emphasizes that human posits some ideology into the legal system. Legal positivism asserts that the content of the law is determined solely by the manmade rules and procedures enacted by society rather than by any inherent moral or natural considerations.³ Law is independent of a moral framework and is only what the human being decides. Therefore, the necessary and sufficient conditions of “what is law and what is not is a matter of social fact (that is, the variety

³ Notes taken from: Wacks, Raymond. *Philosophy of Law: A Very Short Introduction*. OUP Oxford, 2014.

of social theses supported by positivists are various refinements and elaborations of this crude formulation)”⁴ (Raz, 1979b, p. 37). Note the difference between a moral fact and a social fact. A moral fact does not exist, a facet of moral anti-realism; it is the assertion that there is no such thing as an absolute truth value we may attribute to some situation. The challenge with morality is that an assertion of moral fact must uphold every conceptually possible situation, and a moral fact must be universal. Social facts refer to the shared understandings and conventions within a particular society, depending on how that society evaluates and interprets them. Therefore, society must engage in dialogue and discussion to establish and agree upon these social facts. This recognition highlights the importance of the social construction of reality and how shared beliefs, and values shape our world. Social facts require an active democracy, which is only possible when its citizens engage each other and their representatives. If we truly wish to maintain a democracy, we must strive to continue

⁴ Raz, 1979b, p. 37; Toh, Kevin. “An Argument against the Social Fact Thesis (And Some Additional Preliminary Steps towards a New Conception of Legal Positivism).” *Law and Philosophy*, vol. 27, no. 5, 2008, pp. 445–504.

earning it; political reform is never complete, so to sit idly by encourages a dangerous complacency.

A fundamental shift in the emphasis of a legal system from moral facts to social facts would yield a drastically different legal landscape than the one currently in place. This system is open to alteration and change depending on the needs or wants of its applicable society. Hart comments on the nature of moral judgments, presenting the contention “that moral judgments cannot be established or defended, as statements of facts can, by rational argument, evidence, or proof (“noncognitivism” in ethics).”⁵ (Hart, p. 602, note 5) A social fact is empirically determinable and geographically distinguishable because the law is a social phenomenon. However, this creates potential problems that we will address later.

§3.1. The Priority of Legal Positivism

It is vital to note that legal positivism emphasizes the interests of the population in the context of legislation.

⁵ Hart, H.L.A., “Positivism and the Separation of Law and Morals.” *Harvard Law Review*, vol. 71, no. 4, (Feb., 1958), pp. 593-629, p. 602, note 5.

Legislation determines the rights available to the courts when conducting a legal decision. Supreme Court Justice Samuel Alito's decision to overturn *Roe*, which he attributes in some manner to originalism, falls under the legislation. It is the result of prioritizing (what he thinks to be) the interests of the population at the time of the authorship of the Constitution. We ought to focus on the interests of the current population as the basis of legislation to provide rights for modern legal decisions. The flaw with employing a moral framework as the basis of a legal system concerns the inevitable future attempts at reform. It is wrong to have moral principles within a constitution because of the supposition that moral principles are universally correct; the implementation of 'wrong' moral principles in the constitution is only noticeable in hindsight, not to those at the time of its incorporation. If some moral principles are wrong, then by what measure may we assume those we view as right to remain right? The notion of moral principles muddies the efforts of a timeless legal framework, for it is the case by imbuing a constitution with moral principles that we set upon it an expiration date. The legality of abortion is now a debate of moral principles that overshadow

social facts; I argue that to focus on social facts, we should disregard the notion of moral principles.

§3.2. The Separation Thesis

The core aspect of legal positivism to Hart is known as the separation thesis. When we inquire into the nature of law, Hart argues that we often attribute our bias to what law ought to be. The law is a product of social facts that emerge from society's collective attitudes, beliefs, and practices, regardless of the particular process through which we enact legislation. In the American legal system, representatives present and vote on bills, so to Hart, it is merely the process of affirming a bill that transitions a concept into law. "There is no necessary connection between law and morals or law as it is and ought to be".⁶ The constitutional amendment regarding the freedom of speech is not a law because we ought to have free speech; instead, it is a law by actualizing legislation. Legal positivism requires a society to form laws, implying that there are no inherent right or law for human. It is by the hand of

⁶ Hart, H.L.A., "Positivism and the Separation of Law and Morals.", *Harvard Law Review*, vol. 71, no. 4, (Feb., 1958), pp. 593-629, p. 601, note 2.

government and legislation that law becomes law. Therefore, no law has any more outstanding merit than another since the law exists in the absence of morality. Legal *positivism* does not promote moral relativism⁷; it is akin to it like *natural law theory* embodies deontology. If a strict and arbitrary moral framework does not bind the law, pursuing the law becomes justice. The legislating bodies can apply rational decision-making free of perversion.

§3.3. Legal Positivism Approves of the Right to Abortion

How might *legal positivism* argue for the reinstatement of *Roe*? Indeed, we understand the social influence of the overturn of *Roe*: the right to abortion is a social fact. Legal positivism promotes the right to abortion by suggesting that human beings create abortion laws through legislation, and they can be changed or removed through the same process.

⁷ In the field of Ethics, moral relativism is a theory that claims moral truths are not universal but contingent upon the society, culture, or individual that holds them. This theory proposes that moral values are subjective and context-dependent, meaning that no objective or universal moral principles apply to all individuals at all times. It is important to note that there are various forms of moral relativism, and due to its nature as an ethical theory, there are several counterarguments. It is worth noting that legal positivism shares some similarities with moral relativism in its assertions, although legal positivism is **not** a moral theory.

Regardless of whether the right to abortion is morally acceptable, the needs of society determine that it shall become constitutional. The refusal⁸ of prosecutors to charge women with undergoing abortion and the social outcry from politicians and citizens present the public as in general opposition to the overturn of *Roe*.⁹ It is not directly the view of the people that determines a social fact; instead, it is the society as a whole that necessitates a social fact. Engagement between a government and its people through dialogue is necessary for the former to comprehend the latter's needs. The people's viewpoint, as reflected by the perception of the civilian population, plays a crucial role in this process.

In contrast, society includes equity, the state of groups within the civilian population, and further statistical information that people do not consider. The fault with the view of the people is that it is the average of individual perceptions. It is improper to fight for the reinstatement of a constitutional right on the grounds of morality because each

⁸ Perry, Sarah, and Thomas Jipping. "Dobbs v. Jackson Women's Health Organization: An Opportunity to Correct a Grave Error." Heritage Foundation Legal Memorandum, no. 293, 2021.

⁹ Lazzarini, Zita. "The End of *Roe v. Wade*—States' Power over Health and Well-Being." *New England Journal of Medicine*, vol. 387.5, 2022: 390.

opposing side seeks to advance its own moral framework. Doing away with the requirement of a moral framework as the basis of a legal system dismantles the foundation for regressive policies. Why succumb to their rules and play their game? Doing so further validates their position. Morality may drive legal decision-making or the application of laws, but not its formation.

Legal positivism may not morally differentiate between the Jim Crow laws and the right to abortion. Nevertheless, it is the best tool to identify polarizing political positions' failure to use rational decision-making. Legal positivism promotes the right to abortion by viewing it as a matter of legislative and social convention. At the same time, natural law theory opposes abortion by seeing it as a violation of an inherent right to life. It is best to understand the nature of law by subverting its emphasis from perpetuating a moral framework to prioritizing the social facts of society.

To some extent, we already see social facts dictating the variations across state laws because as the needs of a society change, so do the laws. For example, the legal age of vehicle operation is left for the state to decide because some states, like

Montana, contain vast empty spaces of land while others, such as California, have more urban sprawls.¹⁰ The contemporary perspective on the nature of the American legal system aligns with natural law theory, while in practice, it is evolving towards legal positivism.

By clearly demarcating law from the moral framework, society shall benefit from a further emphasis on social facts. Legal positivism opposes the overturn of *Roe* because the decision to overturn *Roe* does not follow from an analysis of social fact. By embracing legal positivism as the foundation of American political society and abandoning the obsolete and destructive natural law theory, the United States can establish a legal system that is flexible, adaptable, and responsive to the evolving social landscape. This practice secures that individual autonomy and diversity are safeguarded and appreciated.

§3.4. The Prima Facie Risks of Legal Positivism

Legal positivism risks ignoring the varying levels of merit among social facts. All laws are considered equally valid under legal positivism, regardless of their moral value. This

¹⁰ MT. Code Ann. § 61-5-133 (2021)

approach fails to distinguish between moral and immoral laws, which can lead to unjust and unethical societal practices. Although legal positivism does not promote a moral framework, a demarcation of moral worth is necessary for legal systems to identify and rectify laws that violate fundamental moral principles. This ensures that legal systems promote justice, fairness, and individual autonomy while avoiding perpetuating systemic oppression and injustice. We may turn to the example of freedom to expand on the shortcomings of legal positivism. In his *An Essay Concerning Human Understanding*, John Locke explains the ideal freedom as not as free from restriction but conditional freedom.¹¹ Both the absence of freedom and freedom without restriction are extremes that render the human being to the slavery of one's government or of the self (as in desires), respectively. Locke strikes the middle ground with his concept of freedom. However, we must consider that freedom is an entirely separate notion from the nature of law. Morality is a binary; we may either have a system dependent on a moral framework

¹¹ Locke, John, 1690, *An Essay Concerning Human Understanding*, edited by Peter H. Nidditch, Oxford: Oxford University Press, 1975.

(natural law theory) in the hopes that the framework correctly determines morality, or a system independent of morality (legal positivism).

There are two significant risks of submitting to a moral framework. The first is blind faith that the moral framework correctly embodies morality, and the second is that if the moral framework is incorrect, the agent already previously forfeits their moral agency and is bound to uphold a false belief. A system independent of morality risks the tyranny of the society; with no framework to ground its legal system, a society may direct itself in any manner it chooses.

§3.5. Legal Positivism Allows for General Laws

Legal positivism promotes the creation of general laws based on our current methods, and it changes how we understand the purpose of law and the biases in interpreting it.¹² However, in order to be charitable, let us consider a critique. One may argue that legal positivism does not afford a society's ability to form general laws; Hart himself argues that

¹² Hart, H.L.A, "Positivism and the Separation of Law and Morals.", *Harvard Law Review*, vol. 71, no. 4, (Feb., 1958), pp. 593-629.

some laws are naturally part of any legal system.¹³ A law such as the prohibition of murder is certainly natural within any legal system not because it is a moral principle. Instead, it is so due to the social facts of society. No society may exist that allows for murder, theft, or rape, because it would then be ungovernable. It is necessary not to confuse moral principles with the necessary conditions for a functioning society. A further critique of legal positivism suggests that it does not differentiate the moral worth of any two laws.¹⁴ Although this argument holds ground, it comes from a severe lapse in understanding the purpose of legal positivism as a meta-legal theory. Legal positivism does not promote the idea that something, such as slavery, is inherently moral or justifiable so long as the society in question runs smoothly. Legal positivism does not support the idea that slavery and any unjust or immoral laws should be accepted and followed simply because they are laws. Instead, legal positivism emphasizes the

¹³ Hart, *On Social Rules*, p. 1172, vol. 75; Stephen Perry, *Hart on Social Rules and the Foundations of Law: Liberating the Internal Point of View*, 75 *Fordham L. Rev.* 1171 (2006).

¹⁴ “Natural Law, Positivism, and The Antelope”; “Natural Law, Positivism, and The Antelope.” *Opinio Juris*, 25 July 2006, <http://opiniojuris.org/2006/07/25/natural-law-positivism-and-the-antelope/>. Accessed 30 March 2023.

importance of understanding and analyzing the positive law within its social and historical context and encourages active engagement in the development and reform of legal systems to promote justice and equity. Therefore, the argument against legal positivism, which says that according to legal positivism, slavery is permissible as long as it allows society to operate smoothly, goes against the core principles of legal positivism.

We do not use moral principles as the basis of law but rather as a justification to perpetuate a facade of good intentions. And through these good intentions, the polarized political climate attempts to compel its citizens to align with their moral position. Equating our legal system with a moral framework falsely validates the originalist perspective on the Constitution's purpose and intention. It allows Justices like Alito to claim the authority of knowledge over the proper moral framework. By recognizing the limitations of our knowledge and focusing on observable facts rather than claiming to have superior moral knowledge, we can create a more just and equitable legal system. Legal positivism allows for formally recognizing societal norms and conventions as the source of law rather than relying on natural law theory or other

moralistic approaches. It emphasizes the importance of the separation of law and morality, allowing for the creation of laws that reflect societal values rather than imposing the values of a select few. In doing so, legal positivism provides a framework for a fair and impartial legal system that promotes equality and justice.

§4. Conclusion

There is a significant benefit in the absence of a moral framework; such a society maintains the moral agency of the individual citizen. The value of the ability to use one's rationality is worth the risk of the collective body of citizens employing rationality incorrectly. Why do I argue for taking such a risk? Because there is an actualizable solution, to emphasize the education of citizens. If a society can reinforce its people's rational abilities, then it may place more trust in the role of the people. A society that submits to a moral framework cannot improve its chances of knowing the correct moral framework because it already submits to one. Adopting legal positivism as a guiding principle in American political society can combat polarizing politics by emphasizing the importance

of objective, neutral interpretations of the law and reducing the influence of subjective, imposed moral frameworks.

One way that legal positivism can combat polarizing politics is by focusing on the role of the law in mediating disputes and promoting the public good rather than on the individual or group interests that often drive political polarization. By emphasizing the importance of neutrality, objectivity, and the rule of law, legal positivism can encourage politicians and citizens alike to seek solutions grounded in reason and evidence rather than personal beliefs or ideologies.

By reducing the influence of subjective, value-laden beliefs, legal positivism can help reduce the impact of identity politics and other forms of polarization based on group identities. This is because legal positivism emphasizes interpreting the law based on its internal logic and coherence rather than on external factors such as morality or ideology.

Legal positivism can help to combat polarization by promoting a more inclusive and diverse approach to politics. By emphasizing the importance of objective, neutral interpretations of the law, legal positivism can help to create a more level playing field for all citizens, regardless of their

background or identity. Equal opportunities for all citizens can help reduce the sense of marginalization and exclusion that can fuel political polarization. Therefore, legal positivism as a foundational meta-principle in the American political society can do away with polarizing politics by promoting a more rational, objective, and inclusive approach to law and politics.