

Book Symposium on Margaret Martin's *Judging Positivism*: Introduction

*Book Symposium sobre Judging Positivism de Margaret Martin:
Introducción*

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Abstract: This introduction provides an overview of the *Book Symposium* on Margaret Martin's *Judging Positivism* (2014), with contributions from André Coelho, Thomas Bustamante, and Jorge Fabra-Zamora, as well as a detailed response from Margaret Martin.

Keywords: Martin, legal positivism, adjudication, *Judging Positivism*.

Resumen: Esta introducción ofrece una visión general del *Book Symposium* sobre el libro *Judging Positivism* (2014) de Margaret Martin, con contribuciones de André Coelho, Thomas Bustamante y Jorge Fabra-Zamora, así como una respuesta detallada de Margaret Martin.

Palabras clave: Raz, Martin, positivismo jurídico, aplicación del derecho, *Judging Positivism*.

Joseph Raz's philosophy of law remains one of the most influential philosophical accounts of law, authority, and practical reasoning. It has prompted a substantial amount of excellent scholarship in the past few decades. Nevertheless, there are few attempts to put together the theses that make up Raz's jurisprudence, explain how they relate to one another, and show how Raz adjusted his jurisprudence over time.

Judging Positivism, by Margaret Martin, is a brilliant attempt to explain the core commitments of Razian jurisprudence and place them in a critical light. The book begins with a reconstruction of Raz's early views about law and adjudication in *Practical Reason and Norms* (PRN), suggesting that in its initial form Raz's legal positivism did not allow for a strict separation between a theory of law and a theory of adjudication.

Instead, it offered a normative account of judicial obligation that placed judges under a genuine obligation to apply the law.

Nevertheless, according to Martin, Raz made some changes in his later work that lead to an important inconsistency in his philosophy of law. Put shortly, the introduction of a theory of adjudication that heavily depends on moral judgments by the interpreter is at odds with the original view that judges are morally bound to apply the law. The thought that legal reasons are preemptive reasons, which Raz never abandoned, commits one to treat the law as providing conclusive reasons for action and leaves little room for second-guessing about the proper course of action to adopt. But this thesis is at odds with the normal justification thesis, which is equally central in Raz's later jurisprudence. According to Martin, the normal justification thesis requires every participant in legal practices, regardless of her institutional role, to assess the legitimacy of a given authority before deciding to act on the latter's directives in a given case.

If these assumptions are correct, then Raz's jurisprudence becomes unstable, ultimately providing an inconsistent account of the nature of law. Indeed, the preemption thesis can only be accepted if it is reinterpreted as a normative assumption, but if Raz accepted this alternative he would end up defending a natural law position that is at odds with his commitment to legal positivism.

Regardless of the vast scholarship dedicated to the study of Razian jurisprudence, *Judging Positivism* has established itself as one of the most elaborated and insightful critical works of Raz's theses about law and adjudication. To celebrate the fifth anniversary of its publication, I organized, in 2019, a colloquium at the Fourth International Conference on Political Philosophy and Constitutional Law, held by the Brazilian Network of Political Philosophy and Law, at the University of São Paulo. Margaret Martin was kind enough to participate in the session and debate with the authors of the papers presented in the event. Three of the comments presented in the colloquium are published in this volume, followed by a careful reply by the author at the end of the symposium.

André Coelho's paper challenges the interpretation of Raz's jurisprudence adopted by Martin in *Judging Positivism*. In response to Martin, he argues that instead of a complete account of legal practice, Raz's theory of law should be read as a hypothetical account of legal systems that possess practical authority in Raz's sense, rather than as a description of actual legal systems.

Thomas Bustamante, in turn, challenges Martin's claim, in chapter four of *Judging*

Positivism, that the tension between the preemption thesis and the normal justification thesis is unresolvable. Although he agrees with Martin that both theses cannot be accepted on conceptual grounds, there remains a conceptual space for these theses if they are accepted on normative grounds.

Lastly, Jorge Fabra-Zamora presents a positivist response to Martin, suggesting that she confuses Raz's theory of the nature of law with his theory of adjudication. In response to *Judging Positivism*, Fabra-Zamora argues that Raz's jurisprudence remains plausible if one takes seriously its attempt to offer a detached account of legality and explain the existence conditions of working legal systems.

The three articles are followed by a detailed response, in which Margaret Martin reexamines her views and defends them against her critics. She remains convinced of her original views and provides further arguments in their defense. The occasion provides a unique opportunity to engage with Raz's and Martin's arguments again, equipped with a refined assessment of the central assumptions of Razian jurisprudence, and thus revisit critically discussions on the methodology of jurisprudence, the role of authority, adjudication, practical reasoning, and judicial obligation.

I am very grateful to André Coelho, Jorge Fabra-Zamora, and Margaret Martin for their insightful contributions to these important debates. Furthermore, I thank the editors of *Isonomía* for providing a qualified venue for publishing these debates.

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