

Summary of the doctoral dissertation  
*A moral argument in the Anglo-Saxon debate around legal positivism*  
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This work deals with the moral argument in the Anglo-Saxon debate around legal positivism. Criticism of positivism is generally relevant here. The criticism of positivism resulted, *inter alia*, from the statement that it did not pay due attention to the question of morality. The theory of positivism emphasizes factuality, perhaps to a small extent contributes to the explanation that law has many functions to improve human life, the rule of law can be a cherished ideal, and the language and practice of law generate a moral factor. In this dissertation, I try to point out that moral argumentation has led to the deepening of the discourse around legal positivism. Its manifestation was, on the one hand, the drawing of the boundary that separated positivism from anti-positivism, whatever that might mean, but on the other hand it led to the presentation of the rule of law as a cherished ideal, favored the disclosure that the language itself and the practice of law are to a significant degree moralized, and thus, with time it contributed to the weakening of the originally accentuated distinctiveness of these boundaries. It was largely what critics of legal positivism had to do with the fact that they were able to convince their adversaries that the most important features of the law should not be found in its origin character, but in the law's ability to promote the common good, safeguard human rights, and honest government. In other words, the moral argument may have, as L. L. Fuller stated, economic value.

The look and reflection devoted to argument and argumentation does not leave the argument on its own. After all, it is an argument in a debate that manifests itself in a specific discourse. Specifying this idea, it should be noted that the understanding of an argument that is embedded in some argumentation is not detached from the context, it is not abstract, despite the fact that abstract concepts are usually components of the argumentation. After all, discourse is a category derived from linguistics, meaning the form of language organization. It is clearly a generalization of the concept of conversation. The concept of discourse is closely related to rhetoric and its function, which, in turn, implies a certain language of description of a selected metadiscourse, proposing a certain set, a dictionary of abstract concepts. The form of language organization and its rhetorical function are subordinated to the purpose of the work, becoming elements of the argumentation strategy adopted by the author. The work, however, is not a study devoted to the argument *per se*, but to the argument in the discourse I have chosen, it concerns a certain exchange of thoughts and views characteristic for the development of views and doctrines of jurisprudence in the area of the issues discussed in the work. The center is a positivist-legal discourse, by which I understand not only the discourse within legal positivism, but also the discourse that concerns legal positivism, and is

formulated from positions different to this doctrine.

The structure adopted in the work - apart from the strict theoretical chapter I devoted to the methodological status of the moral argument itself - reflects the outlined set of legal philosophers, whose achievements shape the problem area covered in this dissertation. Chapter II of the work is devoted to the evolution of the debate. In it, I present, inter alia, moral argumentation based on selected examples. I also show some past events of the Hart-Fuller debate. Chapter III refers to the attitudes adopted by the participants and commentators of the debate towards the thesis on the separation of law and morality. In chapter IV, the last substantive part of the work, I focus on a comprehensive approach to the debate, presenting it in greater detail, step by step referring to, in my opinion, the key issues of the presented disputes.

The choice of the research area is dictated by the influence of individuals, outstanding researchers who are, or have been in some way related, to legal positivism, and whose works have become a space for the exchange of arguments in the debate. The debate over legal positivism began with the publication of H. L. A. Hart in 1958, and the fact that started it was Hart's earlier participation in W. Holmes' lectures during his stay in the USA. Hart in his publication referred to the already age-old work by J. Austin *The Province of Jurisprudence Determined* from 1832, which arose on the basis of J. Bentham's interest in utilitarianism. The further course of events was only a consequence of this. H. Hart in Oxford built an entire school of positivism, educating successive generations of lawyers. His main work, *The Concept of Law*, from 1961, has undoubtedly turned out to be one of the most influential legal works of the present day. It was also important to involve his influential student J. Raz. However, there would not be a debate so important for the 20th century theory and philosophy of law without L. L. Fuller's famous reply in 1958 in the same issue of *Harvard Law Review* as Hart's earlier voice. As the main critic of legal positivism, it was Fuller, a Harvard University professor, who gave this debate a peculiar polemical shape. It was his crude measures that set the tone for the whole debate, forming its main and fast-paced stream. It was he who followed Hart's arguments, even more than Hart did with his arguments, responding and shaping the framework of the debate. Fuller's work from 1964 - *The Morality of Law*, translated into Polish much earlier than the scientifically comparable monument of H. Hart from 1961, has gone down in history and academic textbooks far beyond the tradition of Common Law. At that time, R. Dworkin studied law at Oxford, and then he was entrusted with the chair of jurisprudence in this center, so important for contemporary theory and philosophy of law. His contribution to the critique of Hart's conception of law as an order objectively reduced to rules and methodologically to linguistic research (the famous semantic "sting") and his critique of the thesis about the separation of law and morality create a problem area that is equally significant in terms of research and far

beyond Anglo-Saxon jurisprudence as the earlier debate Hart with Fuller.

It's time to mention the thesis. The main issue is the phenomenal nature of the moral argument. In this general formula, I find an approximation of the three expected values of argumentation carried out in the work of argumentation: creative, separative and diversifying. The first value, in my opinion the fundamental one, is realized through the search for factors, conditions that influence the formation of the discourse itself, which developed not so much within this debate, but around it or in connection with it. I mean here its likely creative value for the theory and philosophy of law in various problem areas important for our discipline. Therefore, it is about answering the question, about the expected and actual consequences of the presented debate. For example, it deepened the discourse revealing the relationship between moral argumentation and the issue of legality. This modified, or actually complicated, the drawing of boundaries that, as previously thought, were to separate legal positivism from the anti-positivist alternative. This prompted the indication of the second of the above-mentioned values exposed in the work, the separative value, which is a consequence of the use of a moral argument in - or in relation to - legal positivism. The extraction of this factor revealed the fact that, on the one hand, the rule of law is an important and valued ideal, and, on the other hand, how unobvious the task is to reconcile this idea, the rule of law, with some simplifying interpretations of the thesis about separation. My arguments, I believe, also revealed how the language itself and the legal practice implemented with its use are highly moralized, but at the same time, the work also allows us to assume the position that the same problematic discourse can lead to a division within legal positivism itself into its two versions, i.e. . inclusive and exclusive. We are thus an attempt to substantiate the third value, diversifying in its effects with the use of a moral argument.