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Controversy of the Legal Rights' Nature in Contemporary Theories of Legal Positivism

SUMMARY OF DOCTORAL DISSERTATION

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SUMMARY

Legal rights, or legal advantages belonging to the individual, present one of the core categories in the Western legal tradition. Debates over the definition of the concept of right have persisted for centuries. To date, there exists an active debate between legal positivism and the natural law theory over what should constitute a source of legal rights and what is the function of rights in the legal system. Although the debate between legal positivism and the natural law theory remained a central rift for many years in the philosophy of law, it appears that recently legal positivism has been taking the edge in contemporary discussions over the nature of law. Some of the most notable theorists of the philosophy of law (J. Coleman, J. Gardner, L. Green, M. H. Kramer, A. Marmor, J. Raz, S. Shapiro, J. Waldron) support the positivist conception of law. Furthermore, there is a tendency in the contemporary theories of legal positivism to focus not on the criticism of the natural law theory as the main and oldest rival, but on discussions about the soundness of ideas presented in other theories belonging to the tradition of legal positivism. In other words, theories of legal positivism focus more on debates within legal positivism itself and seek purification of the positivist conception of law.

A heated debate also continues over the question of the nature of legal rights. More specifically, contemporary theories of legal positivism disagree about what should constitute an important and significant factor defining the function of legal rights. Disagreement exists even over such fundamental questions as what are the necessary and sufficient conditions for the existence of a legal right and are there grounds for conflict between legal rights of different individuals. Therefore, it may be stated that not only does the debate over of the nature of legal rights present a major source of contention between legal positivism and other schools of the philosophy of law, but also that there is no agreement on this issue among contemporary theories of legal positivism themselves.

Debate over the nature of legal rights among theories of legal positivism started in the middle of the 20th century. Since then, theories of legal positivism have split into two main camps which explain the function of legal rights differently, i.e., into the will (or choice) theories and interest (or benefit) theories. The will theories argue that it is the freedom of the individual to decide on the implementation of another person's duty that presents the main function of legal rights. Therefore, according to this theoretical stance, only individuals who have the power to control other persons' duties corresponding to their legal rights can be treated as rights holders. Conversely, interest theories define the function of legal rights as protection of certain interests of an individual. For this reason, they treat legal rights as beneficial to their holder and do not agree that the ability to decide on the fulfilment of another person's duty is an essential characteristic of a legal right. Both will and interest theories provide salient arguments against their opponents' stance. However, the analysis of this discussion inevitably raises the question: why are these two theoretical views of legal positivism treated as two conflicting sides rather than complementary descriptions of rights?

It is important to note that theories of legal positivism declare the aim to describe law as it is, and not as it should be. However, neither will nor interest theories implement this goal, since there may exist such legal rights which perform functions specified in both of these approaches. Therefore, it is not clear on what premises descriptions of the function of legal rights presented by legal positivists are based and why they are not seeking a unified definition of the function of legal rights. In the practice of the application of law, both aspects of legal rights which are emphasised in will and interest theories are important, therefore these theoretical positions could provide a single joint explanation of legal rights and thereby fulfil the goal of legal positivism to describe law as it is. Yet, will and interest theories keep criticising one another and seek to base the description of the function of legal rights on one principle. For this reason, it is important to

examine whether these theories do not violate the fundamental assumptions of legal positivism and whether they are consistent with the main aims of this paradigm of the philosophy of law.

At the same time, the on-going discussion between will and interest theories poses a broader question: given the inherent controversy, is the positivist conception of legal rights possible at all? More specifically, it is important to explore whether the nature of legal rights can be explained with reference to social facts or whether such a task unavoidably implies normative statements. Contemporary theories of legal positivism pay much attention to the mutual dispute over the function of legal rights; they seek to show the limited explanatory power of the opposite theoretical stance and find noncompliance to arguments presented by their rivals in the practice of law application. However, it is not investigated whether the controversy between will and interest theories may stem from the shortcomings in the fundamental assumptions of legal positivism itself. Therefore, the aim of this dissertation is to analyse the different conceptions of legal rights presented in contemporary theories of legal positivism and to ascertain whether the positivist conception of legal rights which does not entail internal contradictions and which does not conflict with the fundamental assumptions of legal positivism is possible at all. More specifically, the dissertation seeks to explore whether theories of legal positivism can properly justify the difference between legal rights and legal norms and to define the function of legal rights based on references to certain social facts without using normative arguments. To achieve this aim, the following tasks must be fulfilled:

1. To examine the basic assumptions of legal positivism and assess whether theories of legal positivism based on these assumptions can properly justify the distinction between legal rights and legal norms;

2. To compare the conceptions of legal rights presented by will and interest theories and assess their relation with the fundamental assumptions of legal positivism;

3. To reveal the normative goals of will and interests theories and herewith the cause of the dispute between these two positivist conceptions of legal rights.

To fulfil the above mentioned tasks, the method of critical analysis, i.e., an attempt to assess the validity of arguments presented in the theory, their compatibility and consistency, is used. More specifically, the dissertation seeks to examine the arguments presented by the different conceptions of legal rights attributed to legal positivism and to assess their validity and relation to the funda-mental assumptions of legal positivism. At the same time, it seeks to analyse the causes of the limited explanatory powers of the positivist conceptions of legal rights and the reasons for certain theoretical contradictions that arise in these theories. It is important to note that the dissertation is limited to the analysis of conceptions of legal rights attributed to legal positivism, i.e. to the analysis of will theories (H. Kelsen, H. L. A. Hart, H. Steiner, C. Wellman) and interest theories (J. Raz, M. H. Kramer, N. MacCormick, D. Lyons). Hence, the analysis and evaluation do not include conceptions of legal rights attributed to other schools of the philosophy of law. In addition, the dissertation does not aim at proving the validity of one particular school of the philosophy of law. The statements defended in the dissertation could be attributed to the tenets of the natural law theory. However, proof of the validity of the conception of legal rights presented in the natural law theory is not the subject of this dissertation.

It is worth noting that the fundamental ideas of legal positivism and their origins were widely analysed by both the theorists of legal positivism themselves and by the representatives of other doctrines opposing them. However, the relationship between the fundamental assumptions of legal positivism and the positivist conceptions of legal rights has not been thoroughly investigated to this day. Therefore, the dissertation seeks to clarify the meaning of the fundamental assumptions of legal positivism in the definition of the function of legal rights as one of the most important categories of Western law.

Such an analysis seeks to contribute not only to the study of the nature of legal rights, but also to provide additional arguments in the discussion on the validity of ideas of legal positivism as one of the main schools of the philosophy of law.

It is important to mention that analysis of the nature of legal rights is particularly significant in disputes concerning euthanasia, abortion or animal rights issues. Such analysis is also of particular relevance due to the rapid technological and social change which necessitates that the issue of autonomy of an individual, the limits of his or her freedom and reasonable expectations should be constantly addressed in a new context. Technological development and changes in social life inevitably force us to return to the analysis of the nature of legal rights and consider the relationship between individual freedom and common good. The priority given to one side, the freedom of the individual, or perhaps the other, the security of the community, will depend on the way we define the function of legal rights. It should be noted that the dissertation also looks at the typology of legal rights provided by W. N. Hohfeld, which has not been extensively examined in Lithuania. In particular, the analysis of a very significant methodological tool provided by W. N. Hohfeld also attests to the novelty of this dissertation. Finally, the novelty of this dissertation lies not only in the attempt to assess the plausibility of the positivist conception of legal rights, but also in the attempt to assess the relationship between the goals set forth in will and interest theories and in other theories belonging to different schools of the philosophy of law.

At the beginning of the analysis presented in the dissertation, fundamental assumptions of legal positivism are identified. First, it is stated that almost all theories attributed to legal positivism recognise that there is no necessary connection between law and morality and any such connection is purely accidental. When defining the function of legal rights, theories of legal positivism also deny the existence of a necessary connection with moral norms. Therefore, this position –

the so-called Separation Thesis – can be identified as one of the fundamental assumptions of legal positivism. According to the Separation Thesis, although legal regulation usually is consonant with the prevailing moral norms, this fact cannot be regarded as a reason to claim that there is a necessary connection between law and morality or that legal norms must meet certain moral requirements. Second, it is important to note that defining the validity of law does not entail the question of its merits. In theories of legal positivism it is stated that both legal science and the practice of law application should be separated from assessments that belong to the field of content and refer only to the criterion of the source of law. More specifically, the decision whether a certain norm is a rule of law is based solely on facts pertaining to the source of this norm and does not depend on whether it is valuable in a particular sense to the individual or to the community. Therefore, this position, named the Source Thesis, implies that the validity of legal norms does not depend on the assessment of the content of norms but only on specific social facts. If we state that there are certain social facts (for example, a legal act, a court decision, a customary norm, etc.), then we can state that specific legal norms are valid, that they are binding. In the case of legal rights, the existence of these rights also depends only on the factual circumstances, i.e., on what constitutes the source of those rights. For this reason, from the point of view of legal positivism, law by its nature is a social or conventional formation, and the Separation and Source Theses can be described as theoretical bases of legal positivism linking various theories which may be assigned to this school of the philosophy of law. The Source Thesis is stricter than the Separation Thesis because it denies the dependence of the validity of law not only on moral but also on any other (economic, cultural) criteria, whereas the Separation Thesis is merely an assertion that there is no analytically necessary connection between law and morality.

It is important to note that the greatest influence on the formation of the Separation and Source Theses came from the distinction

between descriptive and normative statements which was stressed by D. Hume, or the so-called Hume's guillotine (also known as Hume's law). In theories of legal positivism, Hume's guillotine is understood as the notion that it is not possible to derive normative statements from descriptive statements, i.e. from assumptions about what is it is not possible to derive conclusions about what ought to be. This observation of Hume in theories of legal positivism has been seen as emphasising the fact and value dichotomy, which indicates that it is not possible to obtain conclusions about specific normative orders on the basis of certain facts. This means that from the considerations about what rules are most suitable it cannot be deduced that they are valid rules of law. Similarly, from the statement that a certain law is bad it cannot be deduced that this is not a valid law.

Beyond doubt, Hume's guillotine had a significant influence on the formation of the descriptive methodological position of theories of legal positivism. Hume's ideas are noticeable in J. Bentham's book A Fragment on Government. Bentham, and later J. Austin, argued that the main purpose of the positivist theory of law is to describe law as it is, and not as what it ought to be. In the beginning of the 20th century, a similar purpose was stated by H. Kelsen in the Pure Theory of Law, which sought to separate the descriptive and normative aspects of law. Therefore, reference to Hume's guillotine unites both classical and contemporary theories of legal positivism. However, such a methodological provision causes some difficulties in theories of legal positivism. More specifically, it poses difficulty to provide a positive conception of the normativity of law and legal rights. In theories of legal positivism law is defined as a whole of social facts. Hence, a question arises: how does the law as certain social facts (what is) give rise to the obligation to obey it (what ought to be)? The two classical theories of legal positivism (theories of Bentham and Austin) could not properly justify the normativity of law, precisely because they sought to explain the nature of law solely on the basis of social facts as legislature's commands and the fear of legal sanctions, thereby

reducing the normative legal aspect to the empirical and ignoring Hume's warning not to derive an ought from the is.

Contemporary legal positivists justify the normative nature of law using a social argument: law is normative because individuals actually recognise (or have a practical interest to obey) its authority and it is proved by the effective functioning of the legal system. Therefore, the normativity of law in contemporary theories of legal positivism remains based on social facts. This means that they also do not avoid the application of Hume's guillotine since they derive an ought (meaning that the legal system is normative) from the is (from the actual recognition of the legal system). The pursuit to present the conception of the normativity of law based on social facts leads to some contradictions theories of legal positivism face.

Furthermore, when analysing the positivist conception of legal rights, it may be presumed that the concept of legal right in theories of legal positivism is not necessary and redundant. Classical theories of legal positivism emphasise duties which arise from imperative norms, while legal rights are only a derivative category. The conception of legal duties (and legal rights as corresponding to them) set out in the theories of Bentham and Austin has led to the duty, not the legal right, becoming the central element in theories of legal positivism. Both Bentham and Austin singled out duties arising from imperative norms and defined legal rights as correlatives of these duties. This was determined by the aim to define law on the basis of merely empirical criteria, as a whole of social facts, removing any normative elements from its conception. In this case, the concept of duty is appropriate since it is associated with a specific sanction that can be empirically defined, thus avoiding any links to moral or value judgments. It can be argued that in this way, the legal right in theories of legal positivism becomes only a reasonable expectation that the duty will be fulfilled.

In contemporary theories of legal positivism the concept of legal right is also usually defined as a correlative of legal duty. The definition of this kind is typical to many contemporary theories of

legal positivism that analyse the function of legal rights. It may be presumed that legal positivism gives priority to the concept of duty in the dualism of legal rights and duties, and the term of legal right is treated as secondary, that which accompanies the concept of legal duty. Moreover, it is important to note that according to the Source Thesis, both the legal right and the legal duty can be reduced to the legal norm, since both the power of the individual to control another person's duty owed to him or her (looking from the point of view of will theories) and the protection of certain individual interests (looking from the point of view of interest theories) are foreseen by a certain legal norm. Therefore, the legal right in theories of legal positivism is not something different from the legal norm. The legal right, as H. Kelsen notes, is only a special technique of law. In summary, theories of legal positivism cannot provide a consistent definition of legal rights on the basis of the Separation and Source Theses. In an attempt to detach the definition of legal rights from any normative statements, they cannot properly explain the differences between legal rights and legal norms. Hence, theories of legal positivism face difficulties not only when defining the concept of legal right, but also when seeking to explain the functioning of legal rights in the legal system.

In the beginning of the 20th century, Hohfeld presented a classification of legal rights considered to be one of the most significant contributions to this field. This classification set forth the legal right as a general concept used to characterise any sort of legal advantage, be it a claim, privilege, power or immunity. It is important to note that Hohfeld did not provide a definition of the legal right's function, but rather its form. Essentially, he showed what sort of legal relations between individuals are created by legal rights but restrained himself from the content of these relations or their significance for the right holder. But this did not resolve the fundamental philosophical problem as the question, what is the function of all legal rights which can unify the entirety of forms legal rights may take, remained unanswered. This question concerns the purpose of legal rights in the

legal system and, simultaneously, the definition of the nature of legal rights. Contemplation on these issues produces substantive disagreements among theories of legal positivism, which results in the dispute between will and interest theories. These theories lead to different definitions of functions of legal rights.

In will theories, legal rights are defined as instruments which help the individual to achieve rather than to identify his goals. In other words, will proponents are not interested in the content of legal rights; instead, they view legal rights instrumentally. Hence, the main trait of legal rights is that they give the individual the ability to make choices in regard to how the duty towards him will be carried out by another individual. This decision on the implementation of duty arising from a legal right must depend solely on the will of the right holder. However, by defining the legal rights' function this way, will theories meet two main challenges. First, they wrongfully limit the circle of right holders by the claim that individuals do not hold legal rights if they do not have the authority to decide on the implementation of duties towards them since they are held by other individuals. Second, they do not hold a justification for assigning legal rights to individuals in criminal law, where individuals do not possess any powers in regard to how the corresponding duties are implemented. Likewise, they cannot explain the functioning of fundamental legal rights. These deficiencies of will theories are related to their attempt to distance themselves from any affiliations from morality and values and to preserve the main goals of legal positivism. Will theories essentially follow the idea of H. Kelsen that legal right is a special legal technique which gives the individual legal authority to initiate sanctions in response to another individual's failure to carry out a duty towards him. Therefore, in these theories the concept of legal rights becomes unnecessary and redundant.

Meanwhile, interest theories seek to prove that interests of individuals must be treated as a basis of legal rights, and their protection as an essential function of legal rights. This view does not

mean that all legal rights are useful to the individual in any case, but rather that they are useful in general cases, in usual circumstances. However, interest theories do not define the interest concept itself and reject questions about the identification of fundamental interests and determination of their value. These questions are left for political philosophy or political practice. For this reason, an observation can be made that under such circumstances, interest becomes a "hollow" concept and the legislature can fill it with any content. Interest theories leave the decision on which interest must be prioritised over others exclusively to policy makers, which leads to inconsistencies: by holding the view that the definition of interests is not important for rendering the conception of legal rights, the theories discussed herein commit an error. The criteria according to which some interests are prioritised over others serve as the principal factors underlying the question whether legal rights will carry out their function the way interest theories describe it. Consequently, by distancing themselves from the definition of interests, interest theories become abstract and theoretically unjustified considerations about the nature of legal rights.

It is important to note that there can also be found the so-called third way attempts, which seek to overcome the deficiencies of will and interest theories. The best known examples are the "several functions" theory by L. Wenar and the hybrid theory by G. Sreenivasan; they try to reconcile insights from both will and interest theories. However, neither of these attempts manages to present answers to questions which are mandatory in the pursuit of a consistent theory of legal rights. More precisely, in these theories the concepts of benefit and interest are not defined, although they are the fundamental premises on which the interpretation of legal rights is based in both of these theories. For this reason, these theories cannot guarantee that legal rights will carry out the function which is assigned to them. In both Sreenivasan's hybrid theory and Wenar's several functions theory the function of the legal right is accidental and not necessary.

It can be presumed that disagreements between will and interest theories arise from setting different goals in the analysis of legal rights. More specifically, will theories pursue the goal to describe the factual functioning of legal rights and to identify the implications of a legal right to its holder and to his relations with other individuals. Meanwhile, interest theories seek to answer the question, what is the purpose of legal rights' existence, which raises specific requirements or establishes limits for the content of a legal right. Interest theories seek to identify a common principle which applies when defining a set of legal rights in a particular society. In sum, it can be concluded that will theories stress the procedural functioning of legal rights and interest theories seek the normative justification for the purpose of legal rights. Such a division between purpose and procedures also exists between different schools of the philosophy of law. Notably, the natural law theory raises the question of certain criteria which must be met by legal rights and which can justify their normative nature. The social legal theory, more particularly, legal realism, only recognises such analyses of legal rights which are focused on their factual consequences to individuals. For these reasons it can be presumed that will theories have prominent connections with the school of legal realism and interest theories are related with the natural law theory on the basis of goals which are raised in the analysis of legal rights. This means that will and interest theories do not strictly adhere to the fundamental assumptions of legal positivism, i.e., the requirements of the Source and Separation Theses, and do not present a purely positivist conception of legal rights.

The debate between will and interest theories can stem from different priorities given to the most relevant aspects in the process of defining legal rights or, in other words, from priorities associated with different concepts of good. It can be stated that will theories give priority to the value of liberty. Will theories strive to emphasise the importance of individual discretion and free choice – the value of liberty, which, in the opinion of the proponents of will theories, is

undeniably related to the concept of legal right. In addition, the underpinnings presented by will theories when defining legal rights are not analytical (as they do not attempt to distinguish logical differences and identify logical connections), but rather political. In these theories legal rights are treated as the main instrument for each individual to achieve his or her goals in a liberal society. The analysis of interest theories shows that this theoretical position emphasises the development of the individual's welfare, albeit by ensuring protection of the collectively chosen fundamental interests. From this theoretical viewpoint, legal rights are a mechanism of ensuring the aforementioned purpose. Therefore, it cannot be said that theories of legal positivism, which present definitions of legal rights, strictly adhere to one of the fundamental assumptions of legal positivism – the Separation Thesis. Both will and interest theories reflect a certain position of values.

In summary, a conclusion can be drawn that theories of legal positivism meet challenges in the description of what constitutes the nature of legal rights. First of all, these theories face hardships in justifying the normativity of law as well as legal rights. Theories of legal positivism state that law is a phenomenon based on legal conventions and it can be described and explained solely on the basis of social facts. For this reason, from the perspective of legal positivism, analysis of law must restrict itself to descriptive statements as reliance on normative reasons leads to errors. In other words, theories of legal positivism rely on Hume's guillotine, which had a significant influence on the formation of the fundamental assumptions of legal positivism – the Separation and Source Theses. However, Hume's guillotine poses some difficulties to theories of legal positivism themselves. More specifically, in an attempt to limit themselves to descriptive statements, classical theories of legal positivism justify the normativity of law by application of sanctions for disobeying the law, while contemporary theories of legal positivism do this by the factual recognition of the legal system. This

means that from what is (in the case of classical legal positivism, from the factual application of sanctions for disobeying the requirements of law, and in the case of contemporary legal positivism, from the legal practice which shows the recognition of legal order), they deduct that which ought to be (the obligation to obey legal requirements), which does not adhere to the recognised requirement of Hume's guillotine.

In addition, by relying on the Source and Separation Theses, theories of legal positivism do not properly justify the distinction between legal rights and legal norms. In the commonly discussed theories, a legal right is defined as a correlate of a legal duty. However, legal relation, which is represented by the duality of the legal right and duty according to the Source thesis, can be defined only through the concept of norm, and the legal right itself can be treated as a certain technique for the application of law. Such a perception of legal rights in theories of legal positivism creates a contradiction: on the one hand, theories of legal positivism cannot deny the importance of application of legal rights in practice, therefore in an attempt to describe law as it is and not as it ought to be, they cannot ignore legal rights; on the other hand, since the concept of legal rights can be explained only through the concept of norm, it can be treated as unnecessary and redundant.

Legal positivism also faces challenges in its attempt to explain the function of legal rights. A conclusion can be drawn that because of their adherence to fundamental premises of legal positivism, will theories cannot properly describe the function of legal rights. In the latter theories legal rights are defined as a certain technique of law – the possession of locus standi. But locus standi is not a condition to possess a legal right. On the contrary, it is the result of having the legal right and not the cause of having it. A certain legal right can provide an opportunity for the individual to file a lawsuit in case of failure to carry out the corresponding legal duty; however, such an opportunity also might not exist. Therefore, it cannot be said that having locus standi is a necessary characteristic of a legal right.

Inconsistencies in reasoning are inherent in interest theories as well. In an attempt to adhere to fundamental assumptions of legal positivism, they present an incomplete and contradictory conception of the function of legal rights. According to the Source and Separation Theses, the fact whether the individual possesses a certain legal right is determined by concrete social facts, the legal source which establishes norms prescribing these legal rights. Solely the source of norms but not their value is relevant for the determination of the validity of norms, which foresee certain legal rights. There-fore, according to the Source and Separation Theses, it is impossible to prove that legal rights always carry out the function prescribed to them by interest theories, which is to protect the interests of individuals. Such a conception of the function of legal rights is not analytically necessary: it will depend on the factual circumstances of a particular society, i.e., the correspondence between the interests protected by the established legal norms and the interests held by members of society. It cannot be denied that lawmakers can establish such legal rights which will not implement the function foreseen by interest theories. Consequently, the function of legal rights defined by interest theories becomes accidental and is not necessary. Also, this conception of legal rights mainly focuses not on what the legal rights are, but on what they ought to be. This means that these theories attempt to attest that legal rights should protect the individual's interests instead of proving that this function is analytically necessary to legal rights.

Although will theories try to distance themselves from questions about legal rights' content and their normative goals, and instead attempt to describe legal rights the way they are, not the way they ought to be, by doing so, they themselves infringe the latter requirement of legal positivism. Will theories ignore the fact that there are such legal rights which do not carry out the function pre-scribed to them and seek to justify the too narrow interpretation of legal rights' function, which cannot be treated as a universal definition of the nature of legal rights. Meanwhile, interest theories raise certain normative

requirements for the content of legal rights (the requirement to protect the individual's interests), which obviously contradicts the purposes raised in the positivistic analysis of law. Interest theories also focus not on what the legal rights are, but instead on what they ought to be. Hence, the theses defended by will and interest theories are incompatible with the fundamental assumptions of legal positivism.

Such a mismatch between will and interest theories and the fundamental assumptions of legal positivism is also caused by the fact that these theoretical positions emphasise different aspects of legal rights' functioning instead of attempting to present a descriptive conception of legal rights. Will theories highlight what legal abilities are given to the individual by the possession of a legal right, how it enables the individual's free actions. Therefore, these theories emphasise the procedural functioning of legal rights – the control over carrying out another individual's legal duty. To com-pare, interest theories give the main role to the purpose of legal rights. These theories seek to identify what is the purpose of legal rights in a society and what principle should be followed when the content of legal rights is defined. Different views on what is relevant and important in legal analysis can be seen not only in the dispute between will and interest theories on the concept of legal rights, but also in the discussion between different schools of legal philosophy. The natural law theory analyses and attempts to define the purpose of law, while the social legal theory, and legal realism in particular, emphasises the factual and procedural functioning of law. Hence, ideas defended by will theories bear similarities to premises of legal realism, and reasons presented by interest theories are related to ideas of the natural law doctrine. These relations of will and interest theories with views on legal rights presented by other schools of legal philosophy also show that legal positivism does not provide a purely positivistic explanation on the functioning of legal rights.

Since will and interest theories do not properly take into account the inconsistencies in their conceptions of legal rights, it can be

concluded that these views define the function of legal rights not on the basis of certain social facts or with the purpose to deliver the analytically necessary definition of this function, but instead they do that by focusing on particular normative goals. Will theories emphasise the importance of the individual's liberty, while interest theories give priority to the protection of collectively prescribed interests, which is supposed to contribute to the development of the individual's welfare. For this reason they seek to justify different conceptions of the purpose of legal rights or, in other words, the superiority of a certain normative position. All in all, will and interest theories disagree on ideas which are not relevant to the positivistic analysis of law and on questions which exceed the limits of legal positivism.

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