

On Robert Alexy's Theory of the Dual Nature of Law

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Abstract

This paper aims to examine whether Robert Alexy's theory of the dual nature of law is convincing. The paper introduces Alexy's thesis, then analyzes his justification of the ideal nature of law, its real nature, and his attempt to reconcile this duality. The paper will not only show that Alexy does not justify the ideal nature of law, but also characterizes democracy as a factual nature. As for the reconciliation of the dual nature, this paper argues that the conflict in Alexy's theory is not between the ideal and factual natures of law, but rather between the various authorities in the factual dimension. Therefore, this paper concludes that while law as depicted in Alexy's theory is colored by non-positivism in terms of the abstract concept of human rights, in concrete terms the content continues to be dominated by "authoritative issuance." Thus his theory should be classified as legal positivism in its application.

Key Words: Alexy, the dual nature of law, human rights, democracy, constitutional court