

Law as Public Policy: Combining Justice with Interest

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Abstract

In newly emerging democracies, succeeding governments have numerous policy tasks for the purpose of developing the free market and the democratic process. In such legal systems, policy-oriented views of law, which regard law as a policy tool for diminishing public problems, seem descriptively pertinent and prescriptively helpful. This is also the case in mature democratic legal systems, where the public problems faced by governments become more and more complex. Policy-directional views of law do not necessarily imply that law is a value-neutral means that can serve any possible political ends. It is widely recognized among legal theorists and practitioners, with notable exceptions represented by exclusive legal positivists, that the law involves moral values, including justice and liberty. In the present essay, I focus on one version of policy-oriented views of law that is based on the fundamental ideals of justice and interest. By sketching out this version, I attempt to shed new light on some concepts and issues in jurisprudence.

To begin, I articulate the concept of justice and identify the difficulties that interest-based conceptions of justice encounter, by referring to some classical works. I also make a distinction between different conceptions of interest. Next, the two basic concepts in law—rights and liberty—are explained in terms of justice and interest. Efficiency, which has been largely neglected in traditional jurisprudence notwithstanding its practical significance, is also briefly discussed. Then, I turn to exploring the implications that the law-as-policy theory grounded in justice and interest might have for the foundations of two legal domains: criminal law and laws governing political participation. Some allegations and objections against this theory are described, and responses to them are given. The essay concludes by noting the questions that remain open in this theory.

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