



Making the Law Explicit: The Normativity of Legal Argumentation (European Academy of Legal Theory Series)

Matthias Klatt

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Legal argumentation consists in the interpretation of texts. Therefore, it has a natural connection to the philosophy of language. Central issues of this connection, however, lack a clear answer. For instance, how much freedom do judges have in applying the law? How are the literal and the purposive approaches related to one another? How can we distinguish between applying the law and making the law? Making the Law Explicit provides answers by means of a complex and detailed theory of literal meaning. It is a new legal method that is being introduced, assisting in the further development of the law. It is so far unknown in Anglo-American jurisprudence, but the book shows that this new method helps in solving some of the most crucial puzzles in jurisprudence. At its center, the book addresses legal indeterminism and refutes linguistic-philosophical reasons for indeterminacy. It spells out the normative character of interpretation as emphasized by Joseph Raz and, with the help of Robert Brandom's normative pragmatics, it is shown that the relativism of interpretation from a normative perspective does not at all justify skepticism. On the contrary, it supports the claim that legal argumentation can be objective, and maintains that statements on the meaning of a statute can be right or wrong, and take on inter-subjective validity accordingly. The thesis on which this book is based was the recipient of the European Award for Legal Theory in 2002.

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