

Alexander Somek

Wissen des Rechts

Mit Kommentaren v. Andreas Funke u. Thomas Vesting

[Legal Knowledge.]

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Positive law is the object of legal studies. But what is its subject? Is it legal scholarship qua mystical collective body? Is it the courts? Or is it, possibly, the law itself? The main thrust of this volume is to defend the claim that the law is not only the object of legal knowledge, but also its subject. The key to unlocking this somewhat mysterious claim is a theory of the sources of law. These can be understood as forms of judgement, for example in the form of the assertion that something does not work because it has never existed (customary law), or that something is not allowed because it has been decreed so (statutory law). No source can speak for itself, but needs to be assisted by others. As a result, a tense relationship of mutual recognition and rejection arises between and among sources. When it comes to the practice of courts and legal scholarship, this relationship can be reconstructed in Hegelian terms as a dialectic of domination and servitude. The only way out of this dead-end is to extend the theory of legal sources to that of the legal relation. On this basis, legal validity can be understood as a construct we use to deal with reasonable moral disagreements.

Alexander Somek Geboren 1961; 1984 Promotion; Habilitationen in Wien zunächst für Rechtsphilosophie (1992), dann auch für Verfassungsrecht (2001); Professor of Law am College of Law der University of Iowa; Fellow am Wissenschaftskolleg zu Berlin; Gastprofessor in Princeton; Gastprofessor an der London School of Economics; seit 2015 Professor für Rechtsphilosophie und juristische Methodenlehre an der rechtswissenschaftlichen Fakultät der Universität Wien.
<https://orcid.org/0000-0003-1691-8855>



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