**The Autonomy of the Political and the Challenge of Social Sciences**

**(Review of Wilkinson MA and Dowdle MW (2018), *Questioning the Foundations of Public Law*. Hart: Oxford)**

**Reviewed by Dimitris Tsarapatsanis, University of York**

In 2010 Martin Loughlin published his *opus magnum* *Foundations of Public Law* (hereafter *FPL*)[[1]](#footnote-1), the culmination of years of intensive research on the topics of public law and constitutional theory.[[2]](#footnote-2) In Loughlin’s own words, *FLP* set out to historically reconstruct the conceptual formation of public law by venturing into a discipline that Loughlin calls ‘political jurisprudence’, i.e. ‘a discipline that explains the way in which governmental authority is constituted’ (*Questioning the Foundations of Public Law*, hereafter *QF*, p.15). According to Loughlin, *FLP* represents the ‘diachronic’ counterpart to his more ‘synchronic’ previous book *The Idea of Public Law*. In that book, Loughlin had provided an account of the basic concepts that should inform the distinctive kind of inquiry into public law that political jurisprudence enables, albeit without delving into issues pertaining to those concepts’ historical origin. In contrast, *FLP* attempts to chart the gradual rise of what Loughlin calls ‘a science of political right’ by connecting it to developments within the history of ideas as well as that of types of political organization in Western Europe. A watershed moment with regard to both was the emergence of *states* as distinctive forms of exercise of governmental authority. Simplifying somewhat, we might say that a recurring theme in Loughlin’s work is the suggestion that the rise of modern territorial European states as autonomous sources of political power[[3]](#footnote-3) through their increasing disengagement from previously imposed constraints, either conceptual (theology) or institutional (feudalism), drives the corresponding emergence of a ‘science of political right’. That ‘science’ aimed at an adequate conceptualization of the autonomy of states along with various proposals to ground it, from Bodin and Hobbes onwards, in new kinds of normative discourses.[[4]](#footnote-4)

*QF*, co-edited by Michael Wilkinson and Michael Dowdle, is a rich collection of important papers by leading experts whose aim is to critically probe Loughlin’s contributions in *FPL* from a number of different perspectives. Helpfully, the book contains a chapter by Loughlin which provides a concise account of the latest iteration of his position. It also comprises his brief reactions to the chapters. *QF* begins with a useful introduction by Wilkinson and Dowdle. It summarizes the main argument of *FPL* and then helpfully divides chapters into four sections representing thematically similar forms of critique. In the review that follows I shall, first, provide some theoretical context by placing emphasis on the conceptual space that Loughlin’s ‘political jurisprudence’ aims to occupy within contemporary legal theory. Then, I shall briefly present the main arguments of the chapters of the book, before I focus, specifically, on a more sustained critical discussion of the so-called ‘material critique’ of Loughlin’s project.

**Political Jurisprudence in Contemporary Legal Thought**

On the basis of the historical reconstruction provided by *FPL*, Loughlin defends two controversial positions, which shall be at the heart of the ensuing critical discussion. The first is the idea that political jurisprudence is *the only* discipline that can shed proper light on the distinctively autonomous structure of public law under the social and historical conditions of modernity. The second involves the notion that restoring political jurisprudence to its rightful place is an exercise in retrieval. This is so because the forgotten discipline of political jurisprudence, at least since the end of the nineteenth century, has been displaced, on the one hand, by the different schools of legal positivism, of which Hans Kelsen and H.L.A. Hart are the most eminent proponents[[5]](#footnote-5) and, on the other hand, by various forms of anti-positivist theories, the most sophisticated and influential of which is undoubtedly Ronald Dworkin’s.[[6]](#footnote-6) Positivist theories, roughly, make the content of law depend solely on ‘posited’ norms, whose existence can be established as a matter of social fact. On positivist views, there is no necessary connection between (public) law and (true) morality. Whether such a connection exists depends solely on the contingent underlying social facts that determine the content and structure of public law.[[7]](#footnote-7) Moreover, positivists such as Kelsen often argue that the only epistemologically respectable form that a ‘science of law’ may take is that of a value-free description of normatively pertinent social facts. Anti-positivist theories, in contrast, fuse public law and political morality, making the doctrinal concept of law[[8]](#footnote-8) constitutively depend on important political values such as social justice or integrity. According to Dworkin, for example, there can be no value-neutral (or, in Dworkin’s terminology, ‘Archimedean’[[9]](#footnote-9)) description of legal practices that could avoid taking sides on contentious questions of political morality.[[10]](#footnote-10) On Dworkin’s account, any putative description of the law offers an interpretive reconstruction of the significance of past social facts from the vantage point of the best normative understanding of political values.

Now, why do these well-established approaches fail to properly apprehend public law, according to Loughlin? And why does political jurisprudence have to be restored in order to provide an adequate account of public law? Loughlin provides two answers. He argues, first, that positivists err insofar as they fail to address the socio-political factors that condition governmental authority.[[11]](#footnote-11) Indeed, positivists largely seem to follow Kelsen’s lead by ‘black-boxing’ socio-political factors on the basis of a key distinction between the factual (the realm of ‘is’) and the normative (the realm of ‘ought’).[[12]](#footnote-12) Taking the existence of legal norms as a given, positivists simply have nothing to say *qua* jurists on the various political and social forces that cause changes to the constellation of the underlying social facts. The latter are simply taken to reside outside the epistemological parameters of legal science.[[13]](#footnote-13) Now, in contrast to legal positivism, Loughlin insists that only by providing an account of these factors is it possible to adequately approach public law.[[14]](#footnote-14) Thus, political jurisprudence has, *pace* positivism, the ambition to bridge at least one version of the divide between ‘is’ and ‘ought’.

Anti-positivists, on the other hand, make a different kind of mistake: they propose a *moral* as opposed to a distinctively *political* understanding of public law.[[15]](#footnote-15) This methodological choice directs them to theorise public law as a ‘principle-embedded argumentative practice’[[16]](#footnote-16), focusing their attention one-sidedly on courts as forums of judicial reason, rather than on the broader workings of the legal system, which comprises a multitude of different legal actors. Loughlin’s criticism here appears to resemble, in its structure, the one addressed by political realism against so-called moralistic approaches in political philosophy.[[17]](#footnote-17) In much the same way that political moralists are criticized for engaging in a kind of inquiry that misconstrues its main subject matter (the political) by assuming away disagreement and conflict as distinctively political phenomena[[18]](#footnote-18), anti-positivism is accused of obscuring public law by mistaking what is, at best, a domain of reasoned negotiation of ultimately irreconcilable tensions for a domain ultimately explicable by recourse to deep moral principles.[[19]](#footnote-19) The upshot, according to Loughlin, is that anti-positivism conflates legality and normative legitimacy by simply wishing away the true, inescapably political, nature of public law.

**Questioning Loughlin’s Work**

It goes without saying, of course, that Loughlin’s theses, and not only the ones that have just been sketched above, are eminently controversial. As already mentioned, the editors of *QF* have classified the chapters of the book that critically scrutinize Loughlin’s work as falling under roughly four different strands. The first is methodological. It is forcefully articulated in the chapters by Andrew Halpin, Panu Minkkinen and Jacco Bomhoff. Halpin’s chapter represents a radical challenge to Loughlin: it questions the very idea of the autonomy of public law and the corresponding notion of a single concept of the state.[[20]](#footnote-20) Minkinnen’s contribution, while less skeptical of political jurisprudence and radical in its implications, still criticizes Loughlin for his ambition to offer a ‘science of political right’. Minkkinen argues that the endeavor to construct a juridical ‘science’ of the political is in fact an ideological totalizing project at odds with the distinctively democratic dimension of modern politics.[[21]](#footnote-21) For his part, Bomhoff takes issue with Loughlin’s version of the secularization thesis. He contends both that political jurisprudence has in fact a lesser-known and perhaps even repressed theological side and that the separation of politics from religion and, concomitantly, of political discourse from theology, are much more complex than ordinarily assumed.[[22]](#footnote-22)

The second type of critique of *FPL* is normative. It starts with a chapter by Hauke Brunkhorst, which questions the centrality of the ‘top-down’ concept of state sovereignty, heavily relied upon by Loughlin. Brunkhorst proposes to explore the possibility that a ‘bottom-up’ approach, grounded in the notion of communicative power springing from reciprocal relations of solidarity among citizens, provides a better starting point to explore public law’s intricacies.[[23]](#footnote-23) In the following chapter, James Penner brings out connections between Loughlin’s concepts of *potestas* and *potentia* and various positions in contemporary analytical political philosophy to suggest that the former could be elucidated by reference to the standardly made distinction between the right and the good. In this regard, Penner suggests, *contra* Loughlin, that the distinction does not owe its existence to human nature.[[24]](#footnote-24) Anna Yeatman’s proposes a different interpretation of Loughlin’s project. According to Yeatman, Loughlin seems to presuppose a liberal-conservative and anti-statist understanding of public law. Yeatman argues that this it is such an interpretation that could explain Loughlin’s understanding of the ‘rise of the social’ in terms of a kind of demise of classical statehood. Yeatman retorts that an early modern understanding of the role of the state, placing emphasis on its incarnating a distinctive type of political freedom, may reconcile the idea of public law with the rise of the social, whilst also leaving adequate conceptual space for a critique of neo-liberal anti-statism.[[25]](#footnote-25) Last, but not least, Neil Walker broaches the issue of globalization and the extent to which post-statist forms of political organization necessitate a fundamental reworking of classical public law categories, on which Loughlin’s project appears to rely.[[26]](#footnote-26)

The editors label the third kind of critical responses to Loughlin’s work ‘material’. The chapters by Bob Jessop, Marco Goldoni and Michael Wilkinson illustrate perfectly this kind of critique. It comprises analyses of the state from a variety of disciplinary angles. Some of them purport to explain, rather than just use, the main concepts deployed by political jurisprudence (Jessop). Others focus on political subjects as social agents that act on the political constitution and drive its transformation (Goldoni). Perhaps the most ambitious contribution is Wilkinson’s. He seeks to provide a grand narrative of the relationship between the economic and the political under twentieth century Western European capitalism, identifying a purportedly fundamental tension between democracy and capitalism. Wilkinson argues that this tension may simply undercut the central concept of political jurisprudence, to wit, the autonomy of the political.

The fourth and final kind of critique is comparative. It questions the relevance of Loughlin’s conceptualization of public law from the perspective of the discursive and scholarly traditions of US (Mark Tushnet), Indian (Mathew John) and French (Denis Baranger) public law. The main thrust of the criticism articulated by these chapters is that Loughlin’s idea of political jurisprudence is to a certain extent parochial and thus struggles to provide a good fit for non-British legal systems. Somewhat more surprisingly, Baranger even goes on to claim that political jurisprudence could have some trouble in accounting for the historical development of English administrative law itself.

**Taking the Material Critique to Heart: The Challenge of the Social Sciences**

In the remainder of this review, I shall take a closer look at the material critique, especially in the version articulated by Wilkinson, as well as Loughlin’s response. I shall argue that both the critique and the response articulate horns of a dilemma that points to a deeper issue: the epistemological repercussions of the rise of the social sciences as forms of distinctively modern inquiry into the *causes* of social phenomena, where these include political phenomena, such as the autonomy of the state.

As already indicated, Wilkinson’s chapter focuses on uncovering the ‘material conditions’[[27]](#footnote-27) of the autonomy of the capitalist state, which, according to him, ground the autonomy of the political and, thus, support the whole project of constructing a distinctive public law discipline of political jurisprudence. Simplifying an intriguing narrative to the extreme, we might say that Wilkinson critically interrogates Loughlin’s project insofar as the latter simply *presupposes* the ‘autonomy of the political’ as a modern achievement of statehood, without proceeding to enquire into the deeper nature of the social and economic forces that sustain and, Wilkinson claims, presently also threaten it. In particular, Wilkinson contends that two kinds of such ‘material’ forces now at play endanger the very idea of the autonomy of the political. The first ones are to do with the tension between market forces (or capitalism) and democracy. The second ones regard the unequal power relations between different states *qua* geopolitical players.[[28]](#footnote-28) Needless to say, both of these may fuse under conditions of ‘neoliberal globalization’. The classical Marxist theory of imperialism and the so-called ‘imperialist chain’ of states is an attempt at explanation of internationalized political forms that subordinate state power to the needs of the reproduction of capitalist rule.[[29]](#footnote-29) In any event, Wilkinson contends that the drivers he has identified also result in a shrinking of the sphere of democratic self-determination, which corresponds to the modern emancipatory understanding of the autonomy of the political. Wilkinson’s critical claim, then, is roughly to the effect that these deep ‘material’ forces, which condition the forms of manifestation of the autonomy of the political, are simply black-boxed by Loughlin. In fact, Loughlin either takes the autonomy of the political as a kind of historical given without opening the black-box containing the material forces that produce and sustain it, or else insinuates that what really obscures or threatens that autonomy is not the constellation of underlying material forces, but, rather, the historical abandonment of the distinctive perspective offered by political jurisprudence in favor of more traditional positivist and, somewhat more recently, anti-positivist approaches to public law.[[30]](#footnote-30) Note that this second claim makes no reference to material forces. It simply says that what we need is a different juridical way (neither positivist nor non-positivist but political) of looking at an object (the autonomy of the political) that is objectively already there.

Before proceeding further, I want to note two things about Wilkinson’s critique. First, the claim that there is a tension between capitalism and democracy is not just ‘interpretive’ of certain social phenomena, but, properly speaking, causal. It is a claim to the effect that certain kinds of social forces or structures, in this case market forces and/or the structures that sustain the process of accumulation of capital, causally undermine certain other kinds of political structures and practices: those, precisely, that underscore the workings of the democratic state. Second, the material critique, if successful, does not just apply to Loughlin. If valid, it seems to generalize to any kind of normative discourse that divorces normative claims from claims about the workings of material forces. In this respect, this kind of critique shares parallels with another important realist theme that can be found in Williams’s work, to wit, the idea that certain kinds of normative political analysis ‘make sense’ only within certain kinds of social and historical contexts.[[31]](#footnote-31) Famously, Williams has argued that ‘liberalism’ is a normative project of basic legitimation of political practices (the so-called ‘basic legitimation demand’) that makes sense under conditions of *modernity*. Whilst what he meant by ‘modernity’ is open to a number of different interpretations, the claim implies at the very least that, if Western states have moved or are moving *beyond* modernity, normative legitimation projects could be in the process of transforming accordingly.

Now, Loughlin’s response to Wilkinson’s critique seems to be that black-boxing the material forces that condition the autonomy of public law is fine as far as epistemological choices go (*QF* p. 267). In fact, Loughlin fully accepts that all different kinds of causal relationships exist between various factors and political phenomena. However, he claims that, in order to get the project of political jurisprudence off the ground, all that is needed is the relatively thin premise that political relations are not reducible to either moral or socio-economic ones (ibid.). Loughlin thus contends that the autonomy of the political, no matter how it is causally brought about, is sufficient *qua* surface phenomenon that still exists to warrant a distinctive kind of enquiry into public law from the point of view of political jurisprudence.

I now want to suggest that a deeper understanding of the issue that separates Loughlin and Wilkinson might provide reasons to question the adequacy of Loughlin’s response as a vindication of the distinctive project of political jurisprudence. The starting point is to ask the question of what could account for the turn of late nineteenth and early twentieth century legal thought away from the ‘classical’ tradition of political jurisprudence, which Loughlin wants to revive, and toward a positivist outlook, supplemented from the mid-twentieth century onwards with the emergence of a number of robust anti-positivist alternatives. Why was the ‘science of political right’ abandoned as an intellectual project? Are there any factors deeper than intellectual complacency or, even worse, idleness that could explain such a turn in the history of ideas? My proposed diagnosis, which I cannot fully elaborate on for reasons of space, is that any satisfactory explanation should, at the very least albeit in a non-exclusive manner, point to the phenomenon of the rise of the social sciences within the intellectual division of labor. The turn in legal thought away from political jurisprudence and towards forms of positivism and anti-positivism can then be explained partly as a reaction to that rise.

What exactly is the rise of the social sciences? In the crudest terms, it is the emergence, by the end of the nineteenth century, of a number of new disciplines, chief amongst which were economics and sociology.[[32]](#footnote-32) These disciplines explicitly articulated the ambition of making systematic sense of ‘societies’[[33]](#footnote-33) *qua* structured wholes through the deployment of rigorous empirical methods and by way of articulating causal relationships between various kinds of social phenomena. The specific forms that putative causal explanations take of course varied and generated many different kinds of social science. Thus, to take some key examples, Marx’s ‘laws’ of the accumulation of capital (even if these are but *ceteris paribus* laws[[34]](#footnote-34)) differ significantly from Durkheim’s more holistic causal explanations (for example, of practices of suicide by reference to patterns of social solidarity[[35]](#footnote-35)) or from Weber’s rigorous methodological individualism that set the stage for action-based explanations that decompose social wholes.[[36]](#footnote-36) In all these cases, though, there was a deep commitment to an epistemological ideal that moves beyond merely true description of social phenomena and aims at accounting for them in a causal manner.

The twentieth century witnessed the ever-growing expansion and sophistication of these sciences, to cover not only social or economic but also psychological or political phenomena.[[37]](#footnote-37) The result is a social scientific landscape that seems today deeply divided and fragmented.[[38]](#footnote-38) Now, it is not possible to provide here even a rough sketch of the breadth and depth of these new forms of explanation of the social. I shall confine myself to two succinct points that seem to me important for my argument. First, the social sciences, and despite a host of still pending epistemological and methodological disagreements[[39]](#footnote-39), share the desideratum of providing sufficient *empirical grounding* for their findings. This constrains the ways in which evidence of such grounding is gathered and used by reference to more or less strict rules of method and causal inference.[[40]](#footnote-40) It is thus important to note that, apart from revolutionizing the ways in which causal explanations between social phenomena are sought, the social sciences also provided novel concepts for *describing* such phenomena and thus *interpreting* social actions. Second, the more focused ambition of the social sciences to uncover causal relationships between social phenomena in a systematic manner had profound implications for the ways in which other traditional forms of social inquiry were conducted. In particular, many of the canonical specimens of Western political and legal thought appeared increasingly, at least from the point of view of the nascent social sciences, to be nothing more than an unsystematic hodge-podge of psychological precepts, armchair philosophical ruminations and undisciplined uncovering of causal relationships, the proper study of which was now within the purview of these new ways of conceptualizing and explaining the social world.

Now, we do not need settle here the question whether the epistemological claims of the social sciences *qua* causal claims actually deliver the promised knowledge goods. As I have already said, this is too complex a question to tackle, to which we should simply add the social sciences’ quite mixed track record.[[41]](#footnote-41) My only argument here is that, irrespective of whether they were in fact successful as causal explanations go, the social sciences exerted a distinctive kind of epistemological pressure on other kinds of conceptualization of the social, such as more traditional legal methods. I thus contend that the transformations in legal thought at the turn of the nineteenth century can be to a significant extent attributed to the kind of epistemological pressure that was increasingly being exerted by the emerging social sciences. In fact, legal scholars were facing a stark dilemma: they should either distinguish in a principled way their intellectual discipline from the nascent social sciences, or else be accused of running together causal and normative claims in a confused and *ad hoc* manner. As far as legal method goes, the most significant broadly Kantian solution out of this dilemma was provided by Hans Kelsen.[[42]](#footnote-42) His response to the challenge was to prompt legal scholarship to become fully, openly and *solely* normative. Kelsen’s chief idea was thus to black-box all causal relations and to insist that what he called ‘legal science’ should confine itself to describing and explaining distinctively *normative* phenomena. In Kelsen’s terminology, the social sciences were concerned with causal relationships in the domain of ‘is’, whilst legal science aimed at describing in a value-free way normative phenomena in the domain of ‘ought’.[[43]](#footnote-43) Importantly, Kelsen’s solution, despite its specifically positivist content, is structurally neutral between positivist and anti-positivist theories of law. In fact, positivist as much as anti-positivist theories fall on the ‘ought’ side of the ‘is’/’ought’ divide. In both cases, principled epistemological reasons are provided to support the view that normative disciplines are immune to causal accounts of social relationships, insofar as they are not reducible to them. The principled fallback on the normative thus provides a kind of strategy that allows theories of law to black-box social scientific accounts and thereby to survive the onslaught of the causal claims about the law. Note, also, that the strategy is perfectly general. In fact, theorists who claim that normative philosophy, be it moral or political, is an autonomous discipline, also routinely use the same argument to render the normative domain immune from attempts at empirical disconfirmation.[[44]](#footnote-44)

Now, the diagnosis offered above, if correct, points to a number of ambiguities in Loughlin’s project. The first one is to do with the extent to which Loughlin, despite his programmatic declarations to the contrary, actually breaks with the Kelsenian epistemological predicament. In fact, as his response to Wilkinson appears to suggest, Loughlin seems to oscillate between two options. The first one consists in deliberately and completely black-boxing any causal factors that underpin the autonomy of the political. This option has the inconvenience of bringing Loughlin’s project much closer to the more established approaches that he chastises. The second option consists in selectively opening the black-box to choose only a number of causal factors. Thus, for example, Loughlin seems to place a huge emphasis on secularization as a factor that sustains the autonomy of the political in Western democratic states. The worry here is that this kind of selectivity can appear relatively *ad hoc* and perhaps even undisciplined, at least insofar as it is not justified by reference to a wider (and more complex) body of social scientific thought. A variant of this last problem also seems to me to sting Wilkinson’s ‘material’ account as well. The main issue is that, once the black-box of the causal factors that sustain the autonomy of the political is opened up, it will not do to just choose one possible grand social theoretical account among many about the relationships between, say, democracy and capitalism, as Wilkinson appears to be doing. There are at least two concerns here. First, the proposition that there is a tension between phenomena such as democracy and capitalism, like any other proposition that purports to offer a causal account of social phenomena of that kind of generality, has to be defended much more thoroughly in order to become plausible. Second, even if this kind of thorough defense could somehow be provided, there remains the problem of the existence of many different and often rival social theoretical accounts of the autonomy of the political currently on offer. To pick just a random example among a host of others in order to better bring out this point: why should one prefer Wilkinson’s Marxist (or perhaps Polanyian?) account to a systems-theoretical (the political as a result of increasing internal differentiation of autonomous social subsystems[[45]](#footnote-45)) one? The need to choose between different (and often incompatible) accounts of the same social phenomena suggests that it will not be enough to just find *some* account of the ‘material’ forces that condition the structure of the political domain. *Any* candidate explanation should be compared to other rival explanations of the same phenomena in order to identify the one that is most convincing all things considered (or, less ambitiously, less implausible). The upshot is that opening the black-box of ‘material’ factors is an exercise much more demanding and fraught with dangers than Wilkinson’s contribution seems to suggest.

But there is also a second and perhaps even deeper problem with Loughlin’s attempt to revive the historical tradition of political jurisprudence. Recall that the project of *FPL* is not so much to supplement normative accounts of public law by relying on the social sciences. Rather, it is to ‘turn the clock back’ to a reconsideration of the classical authors of the ‘science of political right’, from Bodin to Hegel.[[46]](#footnote-46) However, I contend that, due to the rise and subsequent development of the social sciences, this attempt *nowadays*, even if somehow possible, seems singularly unconvincing. In particular, grand anthropological theories of the ‘political’ grounded on accounts of ‘human nature’ and its ‘essential propensities’, be they, for example, Aristotelian, Hobbesian or Rousseauian, are increasingly being replaced by piecemeal, appropriately disciplined empirical enquiries into specific causal mechanisms whose presence is considered by the relevant epistemic communities to adequately explain social, political and psychological phenomena. Moreover, even when such explanations are not readily available, they are sought after rather than ‘discovered’ through armchair philosophical reflection. This is one reason why, for example, suitable empirical inquiry is widely considered today to constrain even philosophical explorations of, for example, the nature of the human mind.[[47]](#footnote-47) Now, these scientific attempts at understanding the social and the political may well be more or less misguided. The fact remains, though, that they considerably alter the epistemic landscape. To put the point in historicist terms, there is *nowadays* no easy shortcut to an earlier stage of theoretical development, when ‘the science of political right’ implied an (understandable, given the historical theoretical conjuncture) intellectual license to cram together in a comprehensive narrative what are perceived today to be distinct psychological, sociological, normative and theological considerations. In other words, once the genie of the differentiation and sophistication of the social sciences is out of the bottle, a return to a prior epistemic state where these sciences are absent seems increasingly improbable. This is one additional reason why the challenge of the social sciences to Loughlin’s project of revivifying the ‘science of political right’ might cut deeper than he perhaps thinks.

1. M. Loughlin, *Foundations of Public Law*, OUP, 2010. [↑](#footnote-ref-1)
2. Previous work by Loughlin on the topic includes *The Idea of Public Law* and his older *Public Law and Political Theory*. [↑](#footnote-ref-2)
3. Reference to Mann. [↑](#footnote-ref-3)
4. Reference. [↑](#footnote-ref-4)
5. References. [↑](#footnote-ref-5)
6. Reference. [↑](#footnote-ref-6)
7. Caveat for ‘exclusive’ positivism here. [↑](#footnote-ref-7)
8. Reference to Justice in Robes. [↑](#footnote-ref-8)
9. Reference. [↑](#footnote-ref-9)
10. Reference. [↑](#footnote-ref-10)
11. Reference. [↑](#footnote-ref-11)
12. Reference. [↑](#footnote-ref-12)
13. Reference to Kelsen. [↑](#footnote-ref-13)
14. Reference. [↑](#footnote-ref-14)
15. Reference. [↑](#footnote-ref-15)
16. Reference. [↑](#footnote-ref-16)
17. Reference. [↑](#footnote-ref-17)
18. References. [↑](#footnote-ref-18)
19. Reference. [↑](#footnote-ref-19)
20. Reference. [↑](#footnote-ref-20)
21. Reference. [↑](#footnote-ref-21)
22. Reference. [↑](#footnote-ref-22)
23. Reference [↑](#footnote-ref-23)
24. Reference. [↑](#footnote-ref-24)
25. Reference. [↑](#footnote-ref-25)
26. Reference. [↑](#footnote-ref-26)
27. Explain why they call this ‘material’. Reference to the ‘material constitution’. [↑](#footnote-ref-27)
28. Reference. [↑](#footnote-ref-28)
29. Reference to Milios. [↑](#footnote-ref-29)
30. Reference. [↑](#footnote-ref-30)
31. Reference. [↑](#footnote-ref-31)
32. References. [↑](#footnote-ref-32)
33. Reference. In fact, an argument can be made that there is a link between the conceptualisation of communities as ‘societies’ and the rise of sociology. [↑](#footnote-ref-33)
34. [↑](#footnote-ref-34)
35. [↑](#footnote-ref-35)
36. [↑](#footnote-ref-36)
37. Reference. [↑](#footnote-ref-37)
38. [↑](#footnote-ref-38)
39. References. [↑](#footnote-ref-39)
40. Reference. [↑](#footnote-ref-40)
41. Reference to Rosenberg. [↑](#footnote-ref-41)
42. Reference. [↑](#footnote-ref-42)
43. Reference. [↑](#footnote-ref-43)
44. Reference to Cohen/Estlund. [↑](#footnote-ref-44)
45. Reference to Luhmann’s work. [↑](#footnote-ref-45)
46. Reference. [↑](#footnote-ref-46)
47. Reference to the rise of naturalism in analytical philosophy. [↑](#footnote-ref-47)