

Maria Claudia Quimbayo Duarte

# Law's Claim to Correctness



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*For Juan Andrés*



## Preface

This thesis was presented as a dissertation to the Faculty of Law at the Christian-Albrechts-Universität zu Kiel in August 2018.

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## Introduction

In the debate between positivism and non-positivism law's claims have become a central theme. In contemporary debates, we can find the position held by Robert Alexy, who discusses the idea of a "claim to correctness". There have been many responses to Alexy's thesis, which can be divided into two different approaches. On the one hand, there are clear denials. Elements of this are to be found in the responses made by John Finnis<sup>1</sup> and Neil MacCormick. On the other hand, other responses have accepted the idea of law's claims<sup>2</sup>, but in a completely different sense to that proposed by Alexy. The most prominent case would be the claim to legitimate authority, proposed by Joseph Raz<sup>3</sup>.

Having in mind this intensive debate with respect to the claim to correctness as a pivotal element of Alexy's theory, this claim will be the subject of this investigation.

My aim is first and foremost to confirm whether law necessarily raises a claim to correctness and to confirm its effect on legal validity. With this, the scope and the limits of my investigation are determined.

To develop this, I will divide this investigation into three parts. The first part concerns a conceptual framework within which the main concepts of the correctness thesis will be described.

The second part presents a reconstruction of the claim to correctness in some of the most prominent classical legal theories. Especially I will consider the theories of Hans Kelsen, Lon Fuller, and Gustav Radbruch. My aim is to present their positions on this issue and the implications connected with the correctness thesis.

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1 John Finnis denies the necessity of the claim to correctness, not the possibility. See: John Finnis, *Natural Law and Natural Rights*, 2nd edn., (Oxford University Press, 2011), Postscript, 432 n 13.

2 In this sense see also George Pavlakos, *Correctness and Cognitivism. Remarks on Robert Alexy's Argument from the Claim to Correctness*, in: *Ratio Juris*, 25: 15-30. (2012).

3 Joseph Raz, *The Argument from Justice, or How Not to Reply to Legal Positivism*, in: *The Authority of Law: Essays on Law and Morality*, 2nd edn., (Oxford University Press, New York, 2009), 313-35.

## *Introduction*

The third part analyzes the recent debates about the claim to correctness. There, I will in particular be examining the critiques of Joseph Raz, Neil Mac Cormick, John Finnis, and Eugenio Bulygin.