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AN ANALYSIS ON RONALD DWORKIN'S WORK ON LAW AND LITERATURE KEEPING ANALOGY WITH THE IDEA OF INTERPRETATION

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INTRODUCTION AND OVERVIEW

Ronald Dworkin, an American philosopher and jurist from the United States of America has made a critical analogy between law and literature through his famous literary works such as A Matter of Principle, Justice for Hedgehogs, Laws Empire and Taking Rights Seriously. His theories are based on how the interpretative aspect as a form of knowledge in literature can be applied while interpreting statutes in law. He follows a constructive interpretation of the institutional history of the legal system and believes that morals and cultures that date back are useful in interpreting any legal text. He argues that moral principles of people might be wrong and opposed to Law to the extent that certain crimes are acceptable if one's own subjective principles are skewed enough for instance what one community might approve of a crime as their cultural practice which might be morally correct and right for them as opposed to another community who might find it morally wrong and also as opposed to the law.

Through my presentation, I have tried to pose Dworkin's different arguments and suggestions and his opinions as to how the interpretation of law and literature are similar and also what and how other jurists and philosophers declined his ideas and views along with the arguments that will put forth.

BASIC CHARACTERISTICS OF LAW IN ANALOGY WITH LITERATURE

The first and the foremost characteristic is that law is Descriptive where it seeks to describe as it is having a positive connotation. It is illustrative in nature and objective to be based on facts.

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The second characteristic is that law is Interpretive, providing interpretation. It is subjective based on one's thoughts and experiences and conveys meaning how to interpret the statute. It has more of a normative approach where it tends to identify what should be suitable or what actually ought to be.

Lastly, the third characteristic Evaluative which is based on an assessment to form an idea. Since laws need to be evaluated over a period of time, they need to be relevant having coherence with the current scenarios and the judiciary is evaluating laws and making necessary amendments required to forms the basis of what is morally right or wrong having legal ideals.

NATURE OF INTERPRETATION

AUTHORS INTENT

The author's intention rests on the "narrow and constrained" limitation of having to deduce what was on the author's mind at the time of writing his book[2]. What happens if the author considers some new interpretation of his own text sometime later (as in when his thoughts and emotions too change with time) other than what he previously wrote? We should not only consider "full set of interpretive beliefs of an author at a particular moment" which is his only intention. It is obvious that an author at his own book readings sometime later might have a completely different interpretation of his own book, contrast to the interpretation he wished to portray at the time of writing it.

This can be equally applied to the law where just as a novelist's intention is complex and structured in a way that frustrates any simple author's intention theory in literature, we must now notice that a legislator's intention is complex in similar ways. When a judge approaches a piece of legislation, it would be almost impossible and would be irrelevant, to consider what each author or the policymaker as an individual thought at the time and what interpretation he wanted to be considered while apply the law he/she made. This can act as a lacunae in interpreting and applying law having multiverse meanings.

[2] Legal Interpretivism (Stanford Encyclopedia of Philosophy) . 2020. Legal Interpretivism (Stanford Encyclopedia of Philosophy). [ONLINE] Available at: https://plato.stanford.edu/entries/law-interpretivist/#HybInt. [Accessed 23 May 2020].

RAZ

Joseph Raz was an Israeli legal and political philosopher who had a more objective approach as compared to Dworkin. Now, Dworkin believed that morality and law are interconnected and the best possible interpretation can be made with multiple moral justifications where morality can act as a test of law.

Raz, on the other hand believed that "Dworkin's argument suffers from crucial weakness; he assumes that law is necessarily moral so that it follows that if the law is thus and so the one has different moral duties than if it were otherwise"[3]. The relation between law and morality is contingent, where the possible outcomes are unforeseeable and making law in relation to morality might not turn out to be a suitable legal remedy for something which has yet not occurred and has not been tested over time.

Raz considers that law can only be interpreted in regard to the authoritative directives[4] and agrees to what has already been prescribed as law because morality is not necessarily consistent within communities, it is an almost impossible task to address which moral justifications should be adhered to.

Raz and Dworkin are both arguing from different perspectives. Dworkin doesn't claim every legal practice must be understood as morally good, only that one must see it in the light of the best possible arguments for it. Dworkin responded stating that morality does not form the basis of law but can act as a litmus test for it. In order to make authority legitimate, there needs to be some form of moral considerations when laws are created.

FISH

Stanley Fish was an American literary theorist and legal scholar who believed that the aesthetic hypothesis is not valid and that not all texts can be appreciated equally. He stated

[3] [PDF] Legal Principles and the Limits of Law | Semantic Scholar. 2020. [PDF] Legal Principles and the Limits of Law | Semantic Scholar. [ONLINE] Available at: https://www.semanticscholar.org/paper/Legal-Principles-and-the-Limits-of-Law-Raz/c46a89142ef9b2808b6049d5e0f5b94049a9e585. [Accessed 23 May 2020].

[4] Oxford Scholarship Online. 2020. Between Authority and Interpretation: On the Theory of Law and Practical Reason - Oxford Scholarship. [ONLINE] Available at: https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199562688.001.0001/acprof-9780199562688. [Accessed 23 May 2020].

that the power of convincing and interpreting a statute has more of a lawyer approach and prescribes to follow a lawyer model.

Dworkin oversimplifies interpretation by seeking a fixed standard of "truths" to be discovered in interpretation. For Fish, there cannot be a "best" reading of a text, and thus disagrees fundamentally with the aesthetics hypothesis. Fish believes that Dworkin does not consider how any particular vision of what is "best" becomes dominant and imposes its norm on others who may not share his belief. Dworkin presents a "judge" model to find the "best" reading of a case, whereas Fish offers a lawyer model, where the best argument for law, and legal practice, is the one that is the most persuasive, rather than the one that is considered the best morally.

Fish stated that for interpretation that is the power of convincing and interpreting a statute has more of a lawyer approach and prescribes for a lawyer model[5] rather than having an authoritative model. In contrast, Dworkin believed that it is the lawyers who pose plausible arguments out of which the judges can interpret and decide upon the judgment and not the lawyers who interpret and mend laws and use of language as per the convenience and in benefit of their clients.

Fish doesn't justify himself in his consideration that there can be no "best" interpretation, either in law or literature. Dworkin's response to Fish's argument was that Fish is an internal skeptic who doesn't live up to his claims - "if he really does hold such a theory himself, he must abandon, as inconsistent, his own favourite interpretations of texts".

Responding to the same document, Dworkin stated that the Fish was an internal skeptic[6] who did not believe in something unless provided with evidence and that Fish himself was not convinced by his own views[7].

Fish was simply stating everything just to contradict Dworkin's ideology without any firm basis or evidence which leads to the irony to the fact that he believes himself to be objective.

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[5] Stanley Fish, Working on the Chain Gang: Interpretation in the Law and in Literary Criticism - PhilPapers. 2020. Stanley Fish, Working on the Chain Gang: Interpretation in the Law and in Literary Criticism - PhilPapers. [ONLINE] Available at: https://philpapers.org/rec/FISWOT-3. [Accessed 23 May 2020].

[6] [PDF] Interpretation in Law: The Dworkin-Fish Debate (or, Soccer amongst the Gahuku-Gama) | Semantic Scholar. 2020. [PDF] Interpretation in Law: The Dworkin-Fish Debate (or, Soccer amongst the Gahuku-Gama) | Semantic Scholar. [ONLINE] Available at: https://www.semanticscholar.org/paper/Interpretation-in-Law%3A-The-Dworkin-Fish-Debate-(or%2C-Schelly/ae55ce83e0f6c94d9013c48fba1ae6dd97ea3cf1. [Accessed 23 May 20

Also, if he were that objective, he would have simply agreed to what Dworkin quoted rather than having his own interpretation which is subjective in nature, based upon his own opinions that he used to defend himself and he, in turn, was not being objective enough while arguing. For if he was subjective enough, he would have simply agreed to Dworkin in straight away without even having to debate.

NATURE OF ADJUDICTION

AESTHETIC HYPOTHESIS

The aesthetic hypothesis is "an interpretation of a piece of literature attempts to show which way of reading (or speaking or directing or acting) the text reveals it as the best work of art". Interpretation should be evaluative instead of just descriptive.

"Academic theories of interpretation are no longer seen as what they often claim to be – analyses of the very idea of interpretation – but rather as candidates for the best answer to the substantive question posed by interpretation."[8] Dworkin makes no claim that this makes the interpretation objective and doesn't, however mean, that one theory cannot be the best interpretation.

Dworkin argues that the best interpretation for any legal system will be the one that provides the most morally compelling justification of legal practice as a whole.

To break up aesthetic hypothesis- Aesthetic means appreciation of beauty and hypothesis means a proposed explanation that is yet to be proven[9]; it is conjecture without the assumption of truth. According to Clive Bell, an English art critic who supported Dworkin's philosophy-Together aesthetic hypothesis states that it is the starting point of all the systems and is influenced by personal experiences of a peculiar emotion.

All work of art has some specific quality and has to be interpreted objectively yet the influence it casts is subjective and thus the aesthetics of any legal or literary text is subjective though the primary meaning remains objective and same for all. For instance, a painting of

[8] T. R. S. Allan, Dworkin and dicey: The rule of law as integrity - PhilPapers. 2020. T. R. S. Allan, Dworkin and dicey: The rule of law as integrity - PhilPapers. [ONLINE] Available at: https://philpapers.org/rec/ALLDAD. [Accessed 23 May 2020].

[9] Contract as Text: Interpretive Overlap in Law and Literature 12 Southern California Interdisciplinary Law Journal 2002-2003 . 2020. Contract as Text: Interpretive Overlap in Law and Literature 12 Southern California Interdisciplinary Law Journal 2002-2003 . [ONLINE] Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/scid12&div=12&id=&page=. [Accessed 23 May 2020].

sun has to be primarily interpreted as a sun because it matches some of the criteria that make one able to identify it as the sun but at the secondary level, individuals might interpret it as a ray of hope or simply as a ray of light by dealing with the aesthetics that is their own personal emotions that are attached with the object.

THE CHAIN NOVEL THEORY

This rests on an analogy between law and literature. Law is compared to a novel, but a collective one[10]. Each writer (judge) must take the preceding chapters (decided cases) and develop the story (the common law) to make his own contribution. Each writer is obliged to write a chapter that represents the logic and the chronology of the work as a whole.

The chain novel theory in literature means that it is a collaborative fiction written down by a group of authors who standby each other's ideas.

The chain novel is used as a metaphor referring to judicial precedents. Just as different authors come together with different ideas to form a novel all their ideas are reduced down to a single boiling point that has a specific genre throughout the novel and has a sense of coherence or togetherness through which they all are bound similarly in the case of the jurists they form different judgments which eventually formed the basis of case laws and bind upon the other Judges decision as well.

Each judgment acts as a precedent for another judge who is deciding the current case and has to apply the previously declared judgment on the case having similar facts and circumstances so as to ensure stability, consistency and efficiency in administering justice (the principle of *stare decisis*).

With having advantages of the precedents to ensure consistency there is a drawback to it where the judges are placed in a slightly higher position giving them superhuman powers (mocked as Justice Hercules[11], where the judge believe themselves to be the Greek god-Hercules who was a superhuman) where the judges could misuse their power based on internal personal biases.

[10] Julie Allard. 2020. Ronald Dworkin: Law as Novel Writing - Books & ideas. [ONLINE] Available at: https://booksandideas.net/Ronald-Dworkin-Law-as-Novel-Writing.html. [Accessed 23 May 2020].

[11] Jonathan Crowe, Dworkin on the value of integrity - PhilPapers. 2020. Jonathan Crowe, Dworkin on the value of integrity - PhilPapers. [ONLINE] Available at: https://philpapers.org/rec/CRODOT. [Accessed 23 May 2020].

THE INTERPRETATION PROCESS

Dworkin believed in 3 stages involved during interpretation of statues[12] or any literary text having common equivalence. These stages are as follows-

1. Pre-Interpretive Stage: Basic rules and standards are identified.
2. Interpretative Stage: Determine the reason for treating the legal document as relevant to the case.
3. Post-Interpretive Stage: The justification is that the system as a whole promotes integrity of the law.

FIT AND APPEAL

Dworkin states that the novelist is constrained when choosing an interpretation, not by the choices present but by the novelist's own convictions about fit[13]. The constraints are non-moral; it is grounded in non-moral considerations (i.e. in the actions of institutions and agents) and; "the relevant notion of consistency itself is meant to be non-moral, a constraint of formal consistency between norms and principles"[14].

Fit means what fits within the legal framework and appeal means the justification. The fit has more of a positive connotation as to what it is and appeal is more normative in the sense how things ought to be.

It is upon the judge's discretion to decide which legal statute fits within the current legal landscape keeping in mind the current circumstances and giving subsequent justification for the same with the help of analysis and reasoning. They have to identify which possible laws are consistent with certain laws and out of all the statues that are prescribed which is the best

[12] Justice for Hedgehogs — Ronald Dworkin | Harvard University Press. 2020. Justice for Hedgehogs — Ronald Dworkin | Harvard University Press. [ONLINE] Available at: https://www.hup.harvard.edu/catalog.php?isbn=9780674072251. [Accessed 23 May 2020].

[13] Oxford Scholarship Online. 2020. Between Authority and Interpretation: On the Theory of Law and Practical Reason - Oxford Scholarship. [ONLINE] Available at: https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199562688.001.0001/acprof-9780199562688. [Accessed 23 May 2020].

[14] www.coursehero.com. 2020. No page title. [ONLINE] Available at: https://www.coursehero.com/file/p38g6jf7/A-sophisticated-variant-of-this-view-can-be-built-around-the-notion-of/. [Accessed 23 May 2020].

out of them that match the certain criteria and fit with the same with an answer as to why is it such an apt justification. For example, if the crime of negligence committed by understanding the facts and circumstances but the judges have to decide specifically what type of negligence it was if it were contributory or gross negligence(principle of *obiter dictum*) and their subsequent justification (the principle of *ratio decidendi*) that is appeal for the same.

Jessica Lane, a famous news reporter from the US supporting Dworkins ideology and his multiple theories stated that the interpretation is one and unified that is the laws have already been prescribed and have to be adhered to, but if the interpretation is heterogeneous leading to multiple interpretations where there is room for analysis and scope for improvement and that is when the law is made and the process of implementing it actually begins.

CONCLUSION

In his own account of adjudication, Ronald Dworkin highlights the fact that judicial engagement with morality is a necessary feature of legal practice and landscape. This paper examines the nature and implications of his claim. Dworkin is mainly concerned with a form of engagement between law and morality that is not sufficient enough to make morality a part of the law in virtue of it and the sort of engagement with morality[15] that Dworkin identifies turns out to support only the notion that judicial acts have moral meaning or import of some sort. Dworkin's key interpretive claim that adjudication entails offering a *positive* moral justification for the practice of law is undermined by the type of moral engagement he properly identifies[16].

[15] A Matter of Principle — Ronald Dworkin | Harvard University Press. 2020. A Matter of Principle — Ronald Dworkin | Harvard University Press. [ONLINE] Available at: https://www.hup.harvard.edu/catalog.php?isbn=9780674554610. [Accessed 23 May 2020].

[16] Cambridge Core. 2020. Dworkin's Morality and its Limited Implications for Law | Canadian Journal of Law & Jurisprudence | Cambridge Core. [ONLINE] Available at: https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/dworkins-morality-and-its-limited-implications-for-law/65829D470FE2C2F8F896ECA3470D6A0D. [Accessed 23 May 2020].