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DWORKINS THEORY OF MORAL INTEGRITY OF LAW

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ABSTRACT

What is 'law'? or What is the basis for the application of law to achieve the end i.e., justice are some of the hounding question since centuries. There are multiple theories and many of the theorists from Plato, Bentham Austin etc. tries to give their interpretation and perspective in which law should be regarded and applied. One of the renowned philosophers, jurist and scholar is Ronald Dworkin who purposed his ideas in his book Law's Empire. He majorly proposed the view of law and the adjudication process based on the integrity. His theory was also on the interpretation of law through the lens of integrity.

This paper concentrates on Dworkins idea of moral integrity of law. It mainly discusses about the idea of integrity which Dworkins proclaim to be distinct from the political virtue and justice. In general sense the notion 'integrity, is associated with the adherence of principles especially moral principles. However, Dworkin in his work has focused on the idea of integrity and he further proposed that integrity is of two types which is legislative integrity and adjudicative integrity.

In this paper we shall discuss about the idea of integrity, legislative and adjudicative integrity, theory of law based on moral integrity and also the limitations of the criticism of Dworkins theory.

LITERATURE REVIEW

Book

- **Understanding Jurisprudence: An introduction to legal theory By Raymond Wacks**

Raymond Whacks is a renowned emeritus professor of law and legal theory in Hong Kong University.

In his book Understanding jurisprudence an introduction to legal theory he had incorporated the

principles and major theories in a simpler and student friendly manner. The chapter 5 of this book which consists of the theory of 'integrity' and moral integrity of law are majorly referred in the literature review of this project. The concepts of hard case, Hercules adjudication and criticisms of the Dworkin's theory by multiple critics was also referred in this study.

Journal articles

- **Dworkin on Value of Integrity by Jonathan Crowe**

Jonathan Crowe is an Australian Philosopher of Law he also worked as a professor in his career. His paper on the Dworkin on value of integrity which essentially talks about the fundamental concept to of integrity, types of integrity and also the application were referred to in the making of this project.

- **Integrity in Law's empire By Andrei Marmor**

Andrei Marmor also a professor of law and he also worked as a professor of Philosophy at an early stage. In his paper called Integrity in law's Empire he had given his views and interpretation of the Dworkin's theory of moral integrity of laws. From this paper, concept of integrity of law and also his criticism on the interpretative theory of adjudication integrity was also referred in this study

Other references

- **Dworkin and focus on integrity By Albert Calsamigila**
- **Law, integrity and interpretation: Ronald Dworkin's Law's Empire By Steven Ross**

DWORKINS THEORY OF INTEGRITY

Over time, Dworkin's theory of law has undergone tremendous development. Here, the focus is on the Law's Empire edition, which is the most comprehensive to date.

Dworkin famously breaks down the judicial decision-making process into three steps in that work. The first step is the pre-interpretive stage, during which the rules and standards that are tentatively relevant for the current instance are determined.¹

¹ Jonathan Crowe, *Dworkin on the value of integrity*, 96 31 (2004).

The second stage is an interpretive one in which the judge develops a broad theory of the causes and justifications underlying the components of practice noted in the first stage. Finally, at the post interpretive stage, the judge develops an opinion about the judgement that the prevailing social practice in this case needs, taking into account the broad justification framework proposed at the earlier stage. An overtly purposeful element is added to legal discussion during the interpretive step of the aforementioned procedure. The central idea in Dworkin's theory of legal adjudication is perhaps the employment of a general theory outlining the values and principles that underlie the important legal norms. The purposive aspect of Dworkin's theory and his idea of integrity in the law go hand in hand.²

Integrity is regarded by Dworkin as a distinguishing political ideal. His initial division of this idea into two parallel notions—integrity in legislation and integrity in adjudication—represents the two distinct categories of legal decision-making.³

Legislators must make the law logical while keeping in mind a set of underlying values in order for it to be considered law with integrity.

Judges must view the law "as expressing and honoring a set of logical principles" in order to carry out their duties with integrity. According to Dworkin, "no competent analysis of our political practice can overlook it" since it is "so much a component of our political activity."

In making this assertion, he depends on an explanation theory for our current legislative processes, which only adequately explains these behaviors and the political worth of legislative integrity.

We can only adequately explain these behaviors and the societal attitudes that support them if we believe that integrity has intrinsic worth. Dworkin continues by incorporating this explanatory account of integrity into a more comprehensive interpretive theory of the political community: the idea of integrity is consistent with a "community of principle" - a "genuine associative community" capable of upholding a plausible claim to moral legitimacy - rather than a "rulebook community," which appears to be driven only by power. Similar logic is used by Dworkin to support the importance

² *Id.*

³ Albert Calsamiglia, *Dworkin and the Focus on Integrity*, 80 ARCH. PHILOS. LAW SOC. PHILOS. 52 (1994).

of integrity in decision-making. The debate centers on what is the most appropriate justification for judicial practice. Dworkin believes that the concept of intention shapes how judges understand legal documents.

To give specific legal regulations a cogent background context, the use of purpose in legal interpretation includes referring to a collection of overarching objectives or guiding principles. Following that, this interpretive theory of adjudication is included into a broad account of legal institutions as expressing a certain idea of the legal community. At this more abstract level, the distinct concepts of integrity in legislation and integrity in adjudication produce a general idea of integrity in law. It's significant to highlight that, in promoting integrity as a distinct and independent political ideal, Dworkin does not firmly believe that integrity has value regardless of the legal and political situation.⁴

In contrary, he seems to view it as having autonomous significance inside a specific political society, more especially one built on the Anglo-American common-law system. According to Dworkin, the claim is that "our political practices recognize integrity as a distinct value"; in other words, integrity "is so much part of our political practice" that, in interpreting that practice, it cannot be rationally ignored. However, Dworkin believes that integrity has intrinsic value and does not require the addition of additional conditions or values to be useful. In the next chapter integrity as a political virtue and the distinct nature of the integrity will be discussed along with it the moral aspect will also be discussed.⁵

As stated earlier , Dworkin distinguishes between two fundamental domains: adjudication and legislation. Judges are required to interpret the law in ways that would attempt to make it as morally consistent as feasible, and this is where integrity plays the most overtly practical role in common law adjudication. However, the virtue of integrity also pertains to the formulation of laws, that is, to concerns of policy and the advancement of the good. Political action should be founded on justifications that take into account the general moral coherence of the laws and policies now in place as a serious factor that may council in favour or against specific decisions. In other words, integrity

⁴ Crowe, *supra* note 1.

⁵ John Elkington, *Integrity and universality :A comment on Ronald Dworkin's Freedom Laws*, 65 *FORDHAM LAW REV.* (1997).

has a part to play in both the formulation of new laws and policies as well as the interpretation of already existing laws;

It is a comprehensive political virtue that can be used to make both legal and political decisions. So what exactly is this honesty in politics? The most straightforward response is that moral coherence—or, more specifically, the coherence of the morally fundamental principles—justifies the pertinent moral, political, and legal historical judgments in a given domain. When they originate from the strongest overall justification of the pertinent practical realm, political judgments adhere to the concept of integrity. The best interpretation of previous decisions and commitments indicates that a decision would be in violation of integrity if it cannot be incorporated into a morally consistent worldview. As a subset of Dworkin's comprehensive theory of integrity, this is the straightforward response.⁶

Few people would have significant doubts about the usefulness of moral coherence if that were all there was to the virtue of integrity. Anything that is more logical than its alternative must be better than the alternative. Without recognizing the importance of coherence, it is challenging to imagine our worldviews, whether they be in the moral or any other domain. At the very least, we must admit that incoherence is a warning sign, a signal that something is not quite right. But Dworkin's perspective is not reflected in this straightforward definition of integrity. In his opinion, the importance of integrity is considerably more fundamental and is intimately related to political legitimacy.

LAW AS INTEGRITY

Dworkin in his works actually criticized the positivism especially that of the Hart's ideals of positivism. The two major arguments of him against positivism are: 1) law is the function of social convention and it is more than following set conventions or pre decided rules and norms.

The second one is that the law in itself is never complete and law can never have solution to all the problems however these gaps in law should be filled by the judges by using their own interpretation and predilections. He advocates interpretative theory of adjudication where the judges own power of interpretation of laws will play a major role and they also have strong discretionary powers. He also

⁶ Andrei Marmor, *Integrity in Law's empire*, 422 (2019).

bases his arguments on the failure of the emphasis on the individual rights and also the rigid application of the laws in all the cases. Dworkin argues that a law should also contain principles. What is a principle? Principles are considered to be rights. He argues that the rights of individual rights or the principles should not be looked down or ignored with the prevalence of the rules or the common laid down principles which are beneficial to the community as a whole. So here we can clearly see that Dworkin is against the system of rules so he proposes the concept of hard case and Hercules.

Coming to the idea of hard case and Hercules he states hard case is where there will be no direct answer or immediate solution to the and the judge need to interpret and use his own discretion to find the solution. He appoints 'Hercules' as the judge with super human skill, patience and acumen. Hercules here is expected to fill these legal gaps he needs to form the abstract and specific principles bridging the so-called gaps in the law. Here comes the question of integrity in law, according to Dworkin, Hercules should utilize consistency and integrity to bridge this gap and should owe his existence to the gapless legal system where the individual rights re recognized.⁷ Hercules is expected to recognize and respect the moral right of the claimant and along with that he should also recognize the institutional rights and use them with his discretion to give one best and the fit answer. Now the notion 'best and fit answer' comes into play. Dworkin claim that after the application of the principle and through interpretative adjudication one can arrive at a single solution which fits the best to the problem. He argues that every question or the case have a one fit and right answer which will be arrived by the Hercules while administering interpretative adjudication. However, his theory of one right answer was questioned as was subjected to many criticisms.⁸

Thus, Hercules is a helpful interpreter of the chapters of law that were written before him . According to "Law as Integrity," he must consider whether his legal analysis may be integrated into a theory that coherently defends the entire legal system. However, where does Dworkin's fundamental idea of "integrity" fit in? Although he does not define it, he paints a picture of its key characteristics that were covered in preceding chapters.⁹

⁷ Raymond Wacks, *Dworkin and moral integrity of law* , in UNDERSTANDING JURISPRUDENCE AN INTRODUCTION TO LEGAL THEORY 118 (3 ed. 2012).

⁸ *Id.*

⁹ *Id.*

Law as integrity unreservedly respects the rule of law and legal rights... It assumes that the limitations imposed by the law serve society not only by ensuring procedurally justice and predictability, but also by ensuring a level of equality among citizens that strengthens their sense of community and increases the moral basis for the use of political power. It contends that obligations and rights stem from earlier decisions and are therefore considered legal not only when they are stated explicitly in those decisions but also when they follow from the moral and ethical standards that those explicit judgments assume as justification.

As a result, the fundamental issue about the connection between law and force is at the heart of Dworkin's philosophy. The use of coercion and the extent to which it may be justified are inextricably linked in law. This is a recurring theme in natural law, legal positivism, and some social theories. According to Dworkin, a society that upholds integrity as a political value does so largely to support its moral right to hold and exercise a monopoly on coercive force and he points out several additional effects that result from the acceptance of integrity, such as defense against partiality, dishonesty, and corruption.

Integrity also encourages involvement in democracy and the notion of self-government. It is, in essence, a collection of ideals that make up the foundation of a liberal society and the rule of law, or, as Dworkin has now dubbed it, "legality." What makes us value the law? Why do we like societies that up hold the law and, more significantly, why do we commend them for upholding the moral principles that define governments governed by the law? Dworkin argues that while an effective government is admirable, law serves a higher purpose that is more important.

Any rational justification for the value of legality must emphasize the fact that efficiency of government is unquestionably a significant byproduct of legality. No ruler, not even a tyrant, lasts for very long or succeeds in his objectives.

Especially if he completely forgoes law in favour of whimsy or fear. Though, there is another significant value that legality may also be understood to serve. This value is sufficiently distinct from efficiency to provide individuals who value it highly a clear idea of what legality is for. It does not conflict with efficiency, however.

Political integrity entails equality before the law, not just in the sense that the law is upheld in its entirety but also, and more importantly, in the sense that the government must operate under a set of fundamentally universal values. Even if it occasionally improves government efficiency, arbitrary coercion or punishment contradicts that fundamental aspect of political equality.

Dworkin's legal philosophy is fundamentally based on his concern with the morality of the law. It is founded in large part on the ambiguous idea of "community" or "fraternity" as stated earlier. . He states that the notion that integrity commitment is a necessary component of a "true community," which in turn is a necessary component of associative obligations. In the case of a political community, the relevant associative obligations are a necessary component of, or at least a precondition for, political legitimacy. Since there are numerous moving pieces, we must move slowly and with caution. It is a concept that Dworkin's critics, especially the neo-positivists, as they should perhaps be called, continue to react to with hostility.

ASSAULT ON DWORKIN'S THEORY

In the earlier chapter we have discussed the theories and the ideas proposed by Dworkin concerning the interpretation and the application of the law in the adjudication process. As said earlier he proposed many new approaches concerning the same, these new ideas and approaches were widely discussed during that since they were highly controversial.¹⁰ Another aspect of the discussions is that Dworkin's was particularly against the Hart's methods this attracted much of debates and discussions on the ideas and theories proposed by Dworkin.

Some of the key arguments or the key criticisms to the theories and ideas proposed by Dworkin are listed below

- I. The debate against the Hart was highly controversial in Dworkin argued that there was the semantic sting to the positivity and it attracted conventionalism However, Hart in the later point of time in one of his papers had defended that in his idea of positivism judges do have discretionary powers and he also stated that law cannot be same for every one it is different for different individuals. He also seemed to accept that the force of coercion also can be moral coercion. This famous debate among Hart and Dworkin attracted critics to examine and criticize Dworkin's theories. Some of the criticisms

¹⁰ John D. Inazu, *The limits of integrity*, 75 LAW CONTEMP. 181 (2012).

are Rules may also include principles i.e., principles or the regard to rights can also be incorporated in rules. Dworkins also failed to differ the specific principles from the general principles. His argument that in the proposed positivist system judges have weak discretionary powers was also highly criticized. It is argued by professor that judges do not actually lack discretionary power but they tend to choose between the decisions which was by their choice not because of the lack of discretionary powers. ¹¹Dworkin acknowledges that judges have 'poor' discretion (their decision impacts a challenging case's result). Critics disagree that judges lack 'strong' discretion to choose between X and Y.

- II.** Some point to the vagueness of discretion, while others (like Professor Hart) choose the 'unexciting' intermediate stance that judges sometimes employ discretion. Joseph Raz says Dworkin's beliefs are similar to Hart's. Joseph Raz says Dworkin conflates rules and principles. Raz analyses legal principles and concludes that, contrary to Dworkin's argument, they assume and direct judicial discretion.
- III.** The next criticism is of who criticized that Dworkin ambiguously discussed 'law' and 'the law'. His ideas were nor clear and distinct between the general law i.e., the common application and 'the law' 'i.e., the specific in nature. He interchanged both the ideas at few instances and there was no distinct difference between both the notions and applications.

Kramer criticizes that

“Dworkin swerves back and forth between speaking about law and speaking about the law; that is, he equivocates between speaking about a general type of institution and speaking about one instance of that general type ”

Kramer says this is problematic because it's used to differentiate his theory (concerning 'the law') from positivist views (concerning 'law').

- IV.** Dworkin's argument of rejection of the utilitarian principles were criticized and some of the critics expressed that if a person's liberty is curtailed it does not mean that he was not treated equally. Inadequate definition of hard case was also criticized. Th notion 'hard case' which was introduced by Dworkin was criticized that was inadequate and was ambiguous. Hart argues (against Dworkin)

¹¹ Raymond Wacks, *supra* note 7.

that restricting X's liberty does not mean he is not treated equally. For Dworkin, counting "external preferences" constitutes double counting. Hart and those who favour utilitarian justice disagree. There was no proper yardstick for determination or characteristics of the so-called hard case. There were also criticisms on the working, integrity and the nature of judgement of Hercules who was the supposed adjudicator to determine the decisions in the case of hard cases based on integrity.

- V. Another major criticism of the Dworkin's theory is the 'one right answer' theory. Dworkin proposed that there would be one right answer which is best and fits for every legal and moral question this was highly criticized. Critics say there isn't one right answer to every legal question.

Dworkin's argument for the right-answer thesis is complex, its understood in two points. Two forms are possible. The first claims that attorneys' linguistic behavior is misleading because it appears there is no 'logical space' between "this is a valid contract" and "this contract is invalid." It does not consider both propositions false. The contract may be 'inchoate' So, there is no clear answer to whether a contract is legitimate or void.

The second version doesn't assume any 'logical space' between valid and invalid contract claims. It assumes no third alternative. Yet neither of the two alternatives is always true. Dworkin expresses alternatives using formal logic. You probably won't need logic skills. You should illustrate if Dworkin disproved the claim that there is no right response.

- VI. Then there was Stanley Fish who argued that law cannot always be only interpretative in nature however there can be theory which can be unconnected to a specific field and have a generalized usage. There were multiple other criticisms on his theories of integrity and fit and also on the semantic sting which he proposed be that conventionalism.

Andrei Marmor attacks Dworkin's 'interpretive' project and law's integrity. The judge interprets legal information based on basic evaluative judgments like 'integrity,' according to Dworkin.

However, In the absence of a belief that legal texts regulate interpretations, integrity is useless. If not, Hercules could make it up.

- VII.** Commentators point to a shortcoming in Dworkin's model of law. It seems to be based on a liberal democratic (read American) understanding of society, therefore applying it to other communities, especially 'unjust cultures,' is difficult. It's unclear how the theory would work in an unjust or undemocratic society. As we saw, Dworkin argues from a liberal democratic standpoint.
- VIII.** Many commentators have questioned Dworkin's view of law as interpretative. Stanley Fish argues that interpretation is a "social construct": the meaning of a legal or literary piece is a result of "interpretive communities." Fish denies that there can be a 'theory' unrelated to a particular field of action yet universal enough to constrain and explain all fields of activity. Fish, a dispassionate theorist, disagrees. We are all bound by our beliefs. All we can do is articulate our particular rhetorical positions and persuade others of their force.
- IX.** Though there were many criticisms about his ideas and theories by various contemporary philosophers and jurists to which he also defended his theories and ideals and there were also works as a reply to the critics for example chapter called replying to critics in the book taking rights seriously.

CONCLUSION

Therefore, to summarize the above study we can understand that Dworkin was one of the few jurists whose work was most discussed and pondered upon. He was different and distinct in his approaches. He did not side with either natural or the positivist ideals. Essentially, we can observe that with his concept of integrity he appears to incline towards the inclusion of morals and the judgment based on the morals and integrity. However, he was not considered to be a proponent of the natural law. He is often regarded as the founder of the third way. Here we also discussed the criticism towards the positivist approach where he gives a semantic sting to the positivist approach with his conventionalism and the reasons for the same. His concept of legal gaps was also highly recognized and to fill them he also proposed 'Hercules'. Though there were multiple criticisms on the Hercules but still it is highly regarded and considered in the adjudication and the methods of interpretation of laws.

In my opinion Dworkin was actually concerned and was proposing ideas for the practical application of law which will be created by the legislators. If there was strict interpretation of the legislated law

as mentioned by Dworkin the rights of the people and the moral principles will take back seat. This poses a serious issue to the justice delivery and the rightness in the adjudication and interpretation of the laws.

His concept of 'hard case' can be observed in the present day where the interpretation of the law will be the fulcrum to arrive at a decision. For example, we can take 'marital rape' where the strict interpretation and the moral rightness is at crossroads and there was no straight answer to the question. But the conflict comes with the solution and his concept of right answer where he disregards his concept of perspectives and the subjective nature of law.

Therefore, we can conclude that his contributions to the interpretation of the law and the problems he identified can be highly regarded however the solution he offered were disputed but they still stand out as distinct and justified in their own way.

