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In Ronald Dworkin's theory of adjudication there exists no doubt that there is a possibility for both a conservative version of adjudication focusing on "fit" and an activist version of adjudication focused on "best" to be viable. The question that must be asked is which of the two would be the more viable option within Dworkin's framework. Since a conservative interpretation of anything means being less liberal with its original form, a conservative form of adjudication should be examined first to better understand Dworkin's theory as a whole, then, an activist version of adjudication can be compared to the former to see with a clear view how it also can be applied within the theory, and lastly a conclusion can be reached ascertaining which form can be better applied within Dworkin's theory.

Before understanding Dworkin's adjudication theory, you must first understand naturalism. According to Dworkin, naturalism is a form of adjudication where judges decide hard cases by finding the "best" justification they can find, grounded in principles of political morality, for the structure as a whole, from the most profound constitutional rules and arrangements to the details of that compartment of the law (NLR 165). It is important in naturalism that a judge seeks his justification in the whole law, starting first from the immediately relevant compartment of law and moving as far as possible to insure that the conclusions he reaches are consistent with the conclusions he would have reached if his study was wider (LE 166).

According to Dworkin's adjudication theory, any judge participating in the interpretation of the law is not just interpreting the law according only to his judgement and views; rather, the judge is interpreting his case according to his own judgement and in light of the past judgements of all preceding judges who have also interpreted the law to solve a similar case. The aforementioned process is what Dworkin's referred to as, "The Chain Novel" (NLR 166). A chain novelist creates novels in a very unconventional fashion. Unlike an artist or movie director who has sole control over the direction of their painting or film, a chain novelist simply writes one chapter among a long line of chapters without any control over the former chapters or chapters created after their input. Furthermore, a chain novelist endeavors to write his chapter to make the overall novel the "best" it can be by continuing the train of thought of the previous chapters. Likewise, Dworkin argues that a judge interprets the law in much the same way the chain novelist contributes to a novel. The judge must interpret the law in such a fashion that the law is the "best" it can be while also keeping the law a single work of art; the judge must then refrain from interpreting the law in a way that the prior judgements of the law reject (NLR 167).

Within the chain novel analogy, judges have the constraints of "fit" and "best" when determining the "best" interpretation of the law (NLR 178). The interpretation must be "fit" in order that the novel, meaning, the law, not be presented as incoherent and it must show past interpretations in the "best" light such that the law is not seen as inherently corrupt (NLR 177). The first constraint would force a judge to choose an interpretation of the law that follows from the previous interpretations, much like how a conclusion must follow from its premises in a valid argument, even against his own political prejudices. The second constraint would pressure the judge to come to an interpretation that would not invalidate preceding interpretations, thus rendering that whole section of law as false, and not unfairly giving the first person subject to

that law a consequence radically differing from the consequences past people have received for the same act (NLR 177). In addition, the judge must satisfy the need for certainty inherent in any system of natural law. To accomplish this, the judge must not stray too far from previous interpretations of the law in order to allow those in the adjudication process to know the likely outcome that historically typically resulted from that type of case (LE 367). Stemming from his case for certainty in the law, Dworkin makes a case for compartmentalism.

Compartmentalization of the law is the separation of the law into separate departments and is a prominent feature of legal practice (LE 251). Dworkin argues that compartmentalization of the law promotes predictability and guards against sudden official reinterpretations that uproot large areas of law (LE 252).

Foreseeing the objection of his theory of adjudication on the grounds of a judge's background, personal morals, and political prejudices, Dworkin briefly expounds on and defeats this composite attack on his theory. Dworkin first states that judges can form working styles of interpretation that are adequate for routine cases and that can be refined in the event of cases that are not routine (NLR 174). He further concedes that those working styles will also be substantially formed from the judge's background, personal morals, and political prejudices. However, he once again reiterates that although the former things influence the judge's interpretations of the law, the brute facts of legal history will check the power of those convictions in the interpretations that the judge proposes, as the judge must continue the past and not invent a better past, even if it prevents the judge from reaching decisions that he would have reached otherwise (NLR 169).

Another objection of Dworkin's theory comes in the form of an attack on his "Chain Novel" analogy. The strongest point of this objection to Dworkin's theory is that it neglects the

argumentative nature of law. For instance, not only must an attorney satisfy “fit” and “best”, the attorney must also provide arguments for his interpretation that are capable of refuting the interpretation of the opposing attorney.

The more obvious choice at first glance of Dworkin’s theory is the support of Conservative adjudication. By definition, conservative adjudication would better satisfy the “fit” half of the two most important constraints that Dworkin’s has in his theory of adjudication. Conservative adjudication would satisfy with flying color several key points of Dworkin’s theory. According to Dworkin, an interpretation must “fit” the data it interprets, “fit” meaning continuing the law in such a way as not to show it incoherent. Conservative interpretations would “fit” extremely well with past interpretations due to the lack of liberty inherent in a conservative interpretation of the law. Even more, Dworkin states that the brute facts of legal history will limit a judge’s personal convictions when interpreting the law, such that a judge who believes in x rights may have to abandon pushing for that law because his jurisdiction has rejected that idea (NLR 169). A key tenant of Conservative adjudication is interpretivism, which is at odds with instrumentalist activist adjudication. Interpretivism encourages judges to put forth an interpretation that strays little from past interpretations of the law to keep the application of the law fair and keep the law one continuous coherent unit. Interpretive adjudication acts to continue the story to make it better rather than reinvent it to make it better as an instrumentalist would. To drive the point home, Dworkin really argues for the importance of continuity of the law to provide certainty in the legal process and assure that current litigants receive fair treatment in the legal process by applying principles to them in the same way as they were applied to previous litigants in the same compartment of law (NLR 184-185, LE 367).

Although the conservative version of Dworkin's theory seems to be the more intuitive choice, there is an argument to be made for activist adjudication on the basis of "best". A judge should show history in the "best" light he can, meaning his interpretation must come as close to the correct ideals of a just legal system as possible (NLR169). Sometimes, as Dworkin put it, achieving "best" may require the judge to put forth a, "dramatic reinterpretation that both unifies what has gone before and gives it a new meaning or point". Dworkin also states that judges are permitted to regard earlier decisions, opinions, pieces of legislation, and legislative purposes as mistakes if it allows them to achieve greater overall coherence in some area of the law (LE 247). Dworkin seems to be in some way supporting activist adjudication as he goes to say that American legal education celebrates dozens of such dramatic reinterpretations in our American Legal history (NLR 169).

On the other hand, there is sure to be the objection that Dworkin's theory does not allow for an activist judicial version. It can be argued that his idea of choosing the interpretation that makes the law the "best", meaning, that the judge must make an interpretation that would come as close to the correct ideals of a just legal system as possible." (NLR 178), would permit an activist judge to thrive. An activist judge could stay within these bounds as by definition he is trying to actively change and redefine the law in a way that would make the law better by trying to make it as close to a just legal system as possible.

Nevertheless, although seemingly supporting activist adjudication at points, Dworkin clearly dismantles the idea of activist adjudication within his theory with his attack on instrumentalism. Dworkin states that instrumentalists always look to the future and try to make the community as good it can be, all without even taking into regard how the community has been up to the present (NLR 181). This creates great discord and chaos in a society, which is

exactly against a theory of law that advocates not straying too far from previously set boundaries to retain order. Dworkin goes on to describe the folly, saying that all will differ in what they believe makes a good community. Some will judge in purely economic terms, others will judge by utilitarianism, while yet still others will champion individual rights at the cost of the general good (NLR 181). The instrumentalist in his commitment to the future would also be in more danger of choosing an interpretation that plainly goes against precedent just to further the course of action that he believes would make his community better. Such a danger is of no worry to a conservative naturalist judge who will overcome this concern with his commitment to “fit”-in with past law.

Lastly, lending more to the view that an activist judge would not fare well within the framework of Dworkin’s theory of adjudication is his rejection of skepticism. By definition a skeptic is someone who doubts that real knowledge of a thing is impossible. Dworkin argues that this philosophical view is baseless in itself and that it cannot be taken into consideration when making practical interpretations of the law, as the judge cannot then make a decision on what is just and unjust (NLR 175).

Overall, Dworkin’s theory of adjudication is fairly straight-forward once one grasps his central argument; continuity of the law is of the utmost importance, to insure that litigators know the likely outcome of their case in light of former previous cases, to insure that no one has the law changed on them abruptly and are subject to new consequences unfairly foisted upon them, and to encourage the citizen’s faith in the legal system by having precedents that stand the test of time. Certainly there exists in Dworkin’s framework the possibility for both a conservative version that satisfies “fit” better and an activist version that satisfies “best” better. However, with deep analysis into his material, conservative adjudication appears to be the most appropriate

choice for interpreting the law within the bounds of his theory, as it better continues the story than activist adjudication, therefore fulfilling his idea of “fit”, while still being able to satisfy “best” by coming as close as possible to a just legal system within the bounds of previously set precedent.

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