
Dworkin's Theory

Issues with Hart

- Judges under Hart's theory cannot make legal mistakes in hard cases but can make moral or political mistakes. They are immune from legal criticism which is a tough pill to swallow
- If a judge has to make a decision based on their discretion, then there can be cases where someone can be punished for something that wasn't illegal until the judge themselves decided the action was illegal. Or more simply, it could lead to people be sentenced for crimes before they were illegal.
- Dworkin argues that judges, once unable to look to law for further direction, aren't then left to their own devices. There are "principles" and "intentions" that judges then turn to.
 - Dworkin argues that such principles and intentions are uncaptured by Hart's conception of rules
 - Dworkin goes further to argue that principles apply even in Hart's "easy cases"

The case of Riggs v. Palmer

Riggs v. Palmer is an important case in Dworkin's argument against Hart's conception of the legal system. In the court case, a son who knows he is to inherit from his father murders his father to prevent him from changing his will. The court was determining then if it is legal for the son to receive the inheritance. The eventual decision was not one guided by rules or law in the sense that Hart lays out. Instead, the judges appealed to the principle that no one shall benefit from their own fraud. This principle is not a rule as it is not binary in its application, but instead a general consideration that can be overtaken by others (a concept uncaptured by Hart's rules). Therefore Dworkin believes that Hart's rules concerning adjudication fail fundamentally to capture the real process.

To substantiate the claim that principles aren't binary, consider the law pertaining to easements. If someone trespasses property continually and consistently and the owner is aware but does nothing, then the trespasser develops the legal right to trespass in the same manner they have historically been doing. In this case, clearly the trespasser is benefiting from their own wrong doing, but other considerations trump that principle and let the trespasser do so in this scenario. Therefore clearly principles cannot be binary in their application like rules and are hence distinct from rules.

Another component of Riggs v. Palmer is that it demonstrates the importance of principles even in easy cases. The legal issue at the core of Riggs v. Palmer was very clear cut. The law pertaining to inheritance clearly stated that the son was entitled to the inheritance. However, even though this would be an "easy case" according to Hart and therefore a simple application of rules, principles still mattered to

the judges in the case and actually led to an outcome opposite of what the formalist application of law would give. Therefore even in these “easy cases”, principles and intentions still have weight in adjudication, directly going against Hart’s theory.

Hart’s “Rebuttal”

Hart would claim that he has actually accounted for this. He would state that Judge Earl’s appeal to the principle of “no man shall benefit from their own fraud” is Earl’s choice of extra-legal grounds to decide the case on. Equivalently for the dissent from Judge Gray, he decided his extra-legal grounds would not be based on an appeal to principles and instead be the straightforward application of law

Dworkin completely disagrees that this is the case on 2 major reasons

1. Fit

Hart’s description of how Judges make decisions poorly fits how judges actually adjudicate and how participants of the legal system (lawyers, judges, litigants, etc.) argue about a reason about cases. Judges do not act on their own accord and thought when faced with hard cases, but attempt to appeal to the rationale, principles, and intention of law. In the same way that Hart argues Austin’s theory does not fit how law actually manifests itself, Dworkin does the same for Hart.

Dworkin also argues that semantic theories of law (a.k.a Hart’s) do not allow for theoretical disagreement. They only allow for disagreements about what happened in a case or what the text says, and for disagreements about what the law should be. It does not account for disagreements about what the law (when properly interpreted) *is*

2. Acceptability

- Dworkin argues that intentions and principles are themselves part of the Law and are fundamentally the underlying rationale for law.
 - Intentions aren’t argued over if they are accepted or not, but instead argued over how to understand or reconstruct the intentions that matter. This theoretical disagreement is enraptured by Hart

An Aside

Why are these disagreements important?

We want to have the most correct conception of law that accurately describes the real legal system. In the real world, we expect judges to include intentions and principles which then we can disagree with if they are failed to be applied in cases. Under Hart's view, judges are never wrong legally and therefore we are unable to hold views pertaining to the correctness of a judicial decision.

Conversational vs. Constructive Interpretation

- Conversational Interpretation
 - Trying to reconstruct the mental state of someone in conversation
 - “Can you pass me the salt” could be interpreted literally as “Are you capable of passing me salt”, but it is clearly the intention of such a question that the person wants to use salt and is wondering if you can give them salt.
 - Artistic interpretation/Creative interpretation can be argued to be conversational as
- Constructive Interpretation
 - Imposing purpose on an object or practice to make it the best possible example of the form or genre to which it belongs

Consider the “Intentions of the Framers” in art and social practices: Shakespeare's *Merchant of Venice*

- Shilouque
 - Abstract intentions: Make the character looks ridicoulus
 - Specific intentions: Put the character in an 18 inch ruff in order to accomplish the abstract intentions
- If a director wants to make the character look ridicoulus, they have to adapt and violate the specific intentions to fit a modern audience. If the director on the other hand wants to adhere to the specific intentions, they have to violate the abstract intentions
 - Abstract and specific intentions are mutually exclusive choices
 - Dworkin will argue that this same situation appears in legal interpretation where judges have to determine if they should pay attention to abstract or specific intentions of the legislators, framers, etc.
 - If lawmakers declare certain substances toxic and pass a law to regulate them, do future toxins that they were not aware about fall under the law?
 - * Specific intentions would say no, abstract would say yes

Individual vs Corporate Intentions

Consider general courtesy people have for one another. People will have different individual ideas and intentions on how they should act. However, no single person's intentions are authoritative as there is no "president of courtesy". Therefore

How does Constructive Interpretation Work

1. You first start with the objects of interpretation
 - In law, the objects of interpretation are the text of statutes and past decisions/precedent
2. Examine how well an interpretation fits the objects
 - Saying Peggy's O is about aliens clearly does not fit the lyrics at all
3. Figure out the rationale or underlying purpose of the objects, and through the lens of acceptability pick the best candidate
 - For adjudication, the lens is defined by political and moral principles of the judge under the scrutiny of acceptability
4. This rationale then guides further approaches to the objects of interpretation

The Judge Hercules

- Hercules as a theoretical judge treats the statements of legislators and components that make up a law's history as 'political acts' that his interpretations of a given statute must adhere to and/or explain. He also believes the interpretation should be the best answer to political questions, determined by his judgment.
- Dworkin highlights an objection to Hercules' method where it can completely ignore the intentions of legislators (say for the snail darter case if the legislators fully intended giving the environmental agency full discretion over these instances).
- This objection gives the "speakers meaning" view where legislation is an instance of communication and evidence of the mental state of the legislators that is to be conversationally interpreted.
 - This requires a judge to provide a momentary concrete picture of the statute where all its meaning is developed
- Hercules is not bounded in how to lay out the entire meaning of a statute at one specific moment, but can consider its entire development from before being law to judgement and make a judgement given the political events that occurred.