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Midterm Paper 1

Lord Mansfeld once commented on the common law, “The common law works itself pure.” He means that legal rules are developed and refined over time through various judicial decisions. These rules are tested in new scenarios as society evolves over time, and judges further elaborate, create exceptions, and ultimately refine the rules to be near-perfect standards which guide behavior in society. The central feature of common-law legal systems is case law, or judicial decisions which create legal rules for future adjudication, which distinguishes common law from separate legal traditions. Common law is a system of rules because judges establish legal rules that represent the summary conception of rules, yet the process of creating legal rules is constrained by the practice conception of rules, which define standards for creating valid legal rules.

Under John Rawls’s philosophical distinction of “rules,” the legal rules found in common law are examples under the summary conception. The summary conception is defined as “an application of the utilitarian principle to similar cases which results in a general rule for a general situation,” (Rawls 19). Legal rules represent just this, as they are created through actionable principles governing one case’s resolution which can be applied to future similar cases. Legal rules are vertically and horizontally binding, meaning that lower courts must follow rules established by higher courts, and a court must follow its own legal rule established by a previous decision (Schauer 36). Legal rules have authority by exercising judicial constraint. The current court must stand by what has been decided (*stare decisis*) even when a judge may disagree with the past decision (Schauer 37).

However, precedent does not necessarily entail the blind obedience of a previous decision. Rather, the current court learns from a case in the past and applies the same reasoning to resolve a similar case (Schauer 38). For example, in *Yick Wo v. Hopkins*, a San Francisco ordinance requiring all laundromat businesses to apply for a permit was disputed before the Supreme Court. The court ruled that, despite the ordinance’s neutral wording, its bias in withholding permits specifically from Chinese laundromat owners violated the Equal Protection Clause of the 14th Amendment. This case supports the legal rule whereby the discriminatory enforcement of neutrally-worded laws is unconstitutional, and those laws may be struck down (*Yick Wo v. Hopkins*, 1886).

Subsequent courts applied the precedent set by *Yick Wo* not solely because they were obligated, but because the reasoning behind its constitutional interpretation is sound. This prohibition of unequal enforcement under the Equal Protection Clause also represents the summary conception of a utilitarian principle. By deeming this type of discriminatory enforcement of neutral laws illegal, the rule fights governmental harm to citizens and therefore increases social utility.

On the other hand, critics such as legal scholar Ronald Dworkin claim that a change in the law is really an uncovering of a moral principle. An example is *Riggs v. Palmer*, where Elmer Palmer murdered his grandfather to receive his portion of the inheritance. The Court of Appeals of New York ruled that Palmer could not inherit the will because he violated the moral principle “no one should benefit from their own wrongdoing,” (*Riggs v. Palmer*, 1889). While oftentimes there may be moral principles which underpin legal rules, the rules are specific applications of those principles. Moral principles are intuitive and commonsensical, thereby providing convincing justifications which underpin many legal rules. In *Yick Wo*, the moral principle that people should be treated equally in similar circumstances underpins the legal rule. Recognizing a moral principle is an essential feature in some cases, providing the first step to justify a legal rule.

However, not all legal rules explicitly require a moral principle for justification, as in *Riggs v. Palmer*. Rather, legal rules’ adherence to the standards for creating valid precedent justify their continued use in later cases. Rawls distinguishes another type of rule known as practice conception rules. These rules define a practice by designating what behavior is permitted (Rawls 24). The conditions for creating a reliable precedent are practice conception rules which define the practice of common law decision making. Specifically, the instant court must justify its decision by elaborating the “material facts,” or the facts of a case which are relevant to the outcome (Schauer 51). This supports the holding, or legal rule that determines the outcome of a case (Schauer 54). If the instant court were to fail to elaborate the material facts and holding, then future courts would not be able to apply the legal rule to later cases (Schauer 55). In addition, Legal rules may be overruled by the court which previously decided them if the instant court believes the precedent case presents an error “well beyond the range of normal mistakes,” (Schauer 60). An elevated standard for overruling legal rules exists because otherwise stare decisis would merely be a suggestion for current courts. These requirements are examples of practice conception rules which guide common law decision making.

In 2022, the Supreme Court overturned *Roe v. Wade* in the case *Dobbs v. Jackson Women’s Health Organization*. The court decided to eliminate the constitutional right to abortion because the precedents set by *Roe* and *Planned Parenthood v. Casey* were ambiguous and subjective (*Dobbs v. Jackson Women’s Health Organization*, 2022). *Casey* set the legal rule that state laws limiting access to abortion could be struck down if they present an “undue burden” on pregnant women (*Planned Parenthood v. Casey*, 1992). The majority in *Dobbs* wrote how this wording is inherently standardless so it cannot function as an objective legal rule (*Dobbs v. Jackson Women’s Health Organization*, 2022). *Casey*’s other standards prohibiting “unnecessary health regulation” and “substantial obstacle” in abortion laws are also too ambiguous to apply to current cases (*Dobbs v. Jackson Women’s Health Organization*, 2022). Because continued adherence to *Casey* standards would go against the predictable and consistent development of legal principles, the Supreme Court overturned *Roe* and *Casey*, leaving the matter of abortion access to the states.

Also, the Dobbs majority used sound legal reasoning to support their arguments rather than bringing up a social perspective on the matter. By contrast, the majority in Casey speculated about the relative importance of the fetus, bringing their own social views into the matter (*Planned Parenthood v. Casey*, 1992). Dobbs shows that legal rules must have clear standards which guide later court cases, and judges cannot substitute personal viewpoints for legal argumentation.

In addition, there is no universal moral standard in these cases as shown by individual justices' disagreement on the morality of abortion. Whether eliminating a fetus from the womb represents the death of a living being is a nationwide controversy. Therefore, the court's decision to overturn Roe was not predicated on uncovering a moral principle to restrict abortion but rather the wiping of a clean slate, so to speak, to remove faulty legal reasoning that violates the practice conception rules of the common law system.

The common law is a system of rules because judges create legal rules as applicable utilitarian principles which often rely upon universal moral principles, and the process of creating legal rules is constrained by practice conception rules, or the standards of common law decision making. Although moral standards underpin many legal rules, some rules only peripherally address moral concerns because judges are concerned with establishing precedents of sound reasoning and clear standards. The rules defining the practice of creating case law restrict judicial decisions to solely utilize legal argumentation as justification.

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