

Dworkin's theory of law as integrity



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Integrity in law essentially is a theory about the interpretation of the law. Dworkin proposed a view that the interpretation in the law should be guided by the concept of integrity. He believes that the basic issue of the Philosophy of Right is not a semantic one, but one that ' what is the best interpretation for legal practice'. Because the proper goal of Philosophy of Right is to develop a way for the law to be the best explanation of the law; it is also because the behavior of judgment does not determine what the law is, but deciding on specific cases, this is also an explanatory practice. In Dworkin's theory of legal interpretation, the law is an interpretational notion that the judge hearing the case is the process of interpreting the law.

Nevertheless, what is the law? Law not only refers to the rules of the legal system, but also contains principles and policies, both of which are the basis for legal interpretation by the court or judge. In Dworkin's argument, the

judge appears to be beyond the rule of law, it seems that the judge is 'create law' by interpretation, however, his legal view is 'law as integrity', that is to say, in addition to rules of the law, the principles and policies are hidden behind the rules. So the judgment and interpretation of the judge are still the application of 'integral law', not 'create law'. Due to the existence of 'law as integrity'; there is the 'only correct' answer even in the hardest cases but not for 'legal loophole' issue in his eyes. Integrity of the law can achieve 'protect without loopholes' for disputes even if defects of language expressing, major changes in society, or lack of coordination of the law.

II How to interpreting law as integrity?

Dworkin believes that law is an interpretive concept. There are different methods of interpretation to this concept. 'Law as integrity' is one. This interpretation admits that the law not only refers to specific legal rules, but also concludes a set of principle system which can prove the reasonableness of the law. These principles derived from an integral social that makes the law an organized whole. The participants of legal practice (including judges and lawyers) were interpreting the law constructively under the guidance of this principle to providing a theory that is best for current, past and future legal practice. Then give the significance of integrity to the legal practice, based on the understanding of the law, therefore applying the law to specific cases and acquire the right answers to the specific cases.

Dworkin considers the internal point of view as that, the integrity of the legal interpretation is compliance with experience of law practice participants (including judges and lawyers), particularly must be appropriate for the hard cases that don't provide the right answers. With different popular views,

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Dworkin believes that when people argue ' what is the law' there are no other motives to posture to hide their own desires; and not disputed at the edge of the ambiguous words as meaningless. It is misunderstanding of legal practice regardless of seeing them as a liar or fool.

Interpretation as a constructive approach, law as integrity can overcome the defects of other two competitive interpretations which are conventionalism and pragmatism. Conventionalist strictly follow the past conventions and can't deal with hard cases that have no rules to apply- the judge does not sentence so that violated judge's duties to create new law that may contradict with the belief of deciding cases according to the law. The law as integrity requires that the judge can develop the law through constructive interpretation under the law, thus it will combine the demand of stability and adaptability of the law. Dworkin successfully directed with the aid of the concept of integrity that: Legal pragmatism can't explain why people do not want to accept inconsistent treatment of solutions mean that the ' internal compromise'[1], while the law as integrity can be explained.

In summary, the common ground of the two interpretation models: conventionalism and pragmatism is that they all stand there and have no law in front of hard cases; the judge can beyond the law when he has more than one choice however the litigant can only pray. Regardless of both conventionalism and pragmatism can't accept the judge was unlimited, but there is one possibility actually, namely judge may throw the coin to decide how to judge. The law as integrity is firmly opposed to this kind of attitude, it stands that ' even if the book recorded legal rules and instructions is silent', the sound of the law still existed, but is ' low with difficulty hears'[2].

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III What is ‘ law as integrity’?

At first, it is a third independent virtue or political idea that differs from the justice and fairness. It is common that contradiction between ideals in politics, integrity sometimes requires compromise with the other ideals. It can be found that the two virtues of justice and fairness sometimes against each other and we often have to choose one of them in order to decide which political agenda to support if we deny the integrity and make political activities relying on justice, fairness and due process of law. For example, it is believed that the rule decided by majority is the fairest possible decision-making process, but most people often make decision that is not justified to individual rights. Hence, ‘ These difficult questions arise because fairness and justice sometimes conflict. If we believe that integrity is a third and independent ideal, at least when people disagree about one of the first two, then we may well think that fairness or justice must sometimes be sacrificed to integrity.’[3], so ‘ various reasons, both practical and expressive, a community might have for accepting integrity as a political virtue’[4]. Integrity as a virtue is required by the inevitable real world. In an ideal society, all citizens have equal respect, the restrictions and limitations by integrity are not needed; thus, it can be said that integrity can only relate to the second best justice, we do not live in an ideal world. Therefore, it needs the protection in system in order to determine what justice it is. Dworkin also said that: ‘ we accept integrity as a political ideal because we want to treat our political community as one of principle, and the citizens of a community as one of principle, and the citizens of a community of principle aim not simply at common principles, as if uniformity were all they wanted, but the best common principles politics can find. Integrity is distinct from justice and

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fairness, but it is bound to them in that way: integrity makes no sense except among people who want fairness and justice as well.’[5] Obviously, Dworkin emphasized on the integrity relating to justice and fairness.

Secondly, the integrity is a matter of principle. It is both legislative and judicial. As legislative principles, it tells legislators that the simple exchange of justice and fairness is wrong; restricting legislators what may be appropriate to expand or change the public standards. Dworkin said that ‘ Integrity is about principle and does not require any simple form of consistency in policy. The legislative principle of integrity demands that the legislature strive to protect for everyone what it takes to be their moral and political rights, so that public standards express a coherent scheme of justice and fairness.’[6] As judicial principle, it tells the judges and lawyers to make their decision and arguments consistent with the existing legal system; or ‘ requires our judges, so far as this is possible, to treat our present system of public standards as expressing and respecting a coherent set of principles’[7]. Dworkin is undoubtedly paying more attention to the integrity of judicial principles to which the related idea is an important part of Dworkin’s Philosophy of Right.

Integrity as a judicial principle means restriction and guidance to judges interpreting the law. In order to ensure ‘ consistency’, Dworkin regards the judge as the author of the chain novel, the goal of many coauthor chain novels is that making it unfold logically for the characters and plot decided at beginning. The opus is like completed by one author. ‘ Each novelist aims to make a single novel of the material he has been given, what he adds to it, and (so far as he can control this) what his successors will want or be able to

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add. He must try to make this the best novel it can be construed as the work of a single author than, as is the fact, the product of many different hands. This calls for an overall judgment on his part, or a series of overall judgments as he writes and rewrites.’[8] However the interpretation of each author may be diverse, but it is influenced by two factors. One is suit, in other words, his work should consistent with the work before; another is judgment, that is to say, he must judge which kind of interpretation is able to interpret the work best if many interpretations were consistent with the work before. The chain novel’s author creates a work like one person because of the two limits above. The judge should use the thought method such as chain novel when they understand and apply the law. He should consider the past decisions as a part of a novel to which he must interpret and continue; making judgment as accurate as possible based on integrity and the theoretical knowledge and values.

When considers integrity, Dworkin also clears that how to deal with historical issues, which is one of the requirement about ‘ consistency’. He said: ‘ Integrity does not require consistency in principle over all historical stages of a community’s law; it does not require that judges try to understand the law they enforce as continuous in principle with the abandoned law of a previous century or even a previous generation.’[9] History is important in that the scheme of principle must provide reasonable reasons for past standing and contents of judgments; history is important for the law as integrity, but is only important in some respects. On the contrary, the integrity insists that: ‘ a horizontal rather than vertical consistency of principle across the range of the legal standards the community now enforces. It insists that the law- the

rights and duties that flow from past collective decisions and for that reason license or require coercion- contains not only the narrow explicit content of these decisions but also, more broadly, the scheme of principles necessary to justify them.’[10]

In case *Riggs v. Palmer*[11], it fully reflects the importance of the principle of legal integrity. Such as the judge comments that it should not interpret law in isolated historical background, but should be based on the general principles of law. Judges should make the interpretation of the law to consist with the general principles of law as far as possible when interpreting laws. It will be ridiculous that the murder becomes the successor is allowed. Law must respect a basic principle that a person cannot benefit from his fault. If the judge applies the law rigidly and decides the murder Palmer won the right of inheritance of his grandfather, so that they are violating the principles of justice and fairness contained by law. It indicates that the interpretation by the judge to law deeply manifests the judge’s legal awareness and his political and moral attitudes. Dworkin concludes that the opinion to any judge is a philosophy of law, even if his philosophy was hidden and not disclosed, even if obvious inference is full of provisions and facts. [12]Jurisprudence is the general part of the trail and the ‘ silent preamble’ of any legal judgments. ‘ Law’s empire is defined by attitude, not territory or power or process.’[13]

Therefore, Dworkin always stressed that the standard hidden behind the provisions when he ‘ rebuilding’ the law. In his view, the provisions of the law are always general and abstract in judicial practice, and cannot be concluded in every circumstance. This requires the judge to find the content behind the <https://assignbuster.com/dworkins-theory-of-law-as-integrity/>

rules in the process of law interpreting; the hidden law may be abstract, some self-evident facts or some conclusions resulted from reasonable inference. Only find these hidden laws, the judge can clearly distinguish similar cases from non-similar cases to achieve the requirement of treat equally without discrimination.

It can be seen that the legal interpretation in the eyes of Dworkin is actually an objectively rebuild of the law, the law is not just composed of a bunch of rules, it is a closed and perfect system, interpretation is only a rebuild to the question of this system. Dworkin's theory of legal interpretation is full of idealism, however the realization of this ideal is based on certainty and provision of the law and capable judges, the judge cannot be arbitrary when they interpret the law. On the contrary, they are interpreting law constructively under the current scheme and scope of the whole law. In other words, his purpose is to make the interpretation ' become the best' based on both current legal material and scheme.

IV Misunderstanding to ' law as integrity'

After Law as integrity published on which the criticism has not been stopped. ' Law as integrity' becomes the essential target criticized by the repudiator, but the majority of repudiators do not understand ' law as integrity' correctly, how could they criticize this goal?

Forbid judge create the law

Dworkin indeed stressed that even if processing the case the law has not proved obvious answer to it, the judge should also resort to the law, confirming and carry out the rights stipulated by law, but should not resort to

the factor outside the law, otherwise it constitutes a threat to the civil right. However, it is not equal to deny any creativity of the judge; it only denies the creativity of the judge without limit.

The legal integrity interpretation is a constructive one. The elucidator is not a mechanical and passive main body. All interpretation is the process that seeks for significance. Looking from the external viewpoint, all significances are the elucidator endow with the object; that is why Dworkin talked about constructive interpretation, saying that: 'constructive interpretation is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong.' [14]

However, by looking at the intrinsic viewpoint, if participant describes the psychological activity when he is interpreting, it will be more accurate than the creation. As interpretation that cannot be understood randomly. The legal interpretation will always be limited by application goal (universal legal rule to apply in specific case) and tradition. These limits in fact are the prerequisite that the interpretation can be possible. Dworkin uses 'chain novel' analogies to the restraint the judge receives in the judicial process. Different authors will make different decisions, but, his decision doesn't contain appropriate summary whether and how the content will be separated from the provided novel he is writing. The same with the author of chain novel, the judge also receives the restraint of the law. This is why Dworkin firmly believed that even if in hard cases, the goal of decision process is to find but not to create the right for both sides.

The fact is that in his intrinsic viewpoint Dworkin described the judge is finding but not creating the law; however the critic listened that judge 'should' find but not create the law. Actually none of the judge was separated the whole law values when he was judging the case. As it has discussed, Dworkin's understanding of the judge is to find law but not to create law is not impractical.

The best (no loophole) legal system

The best legal system is inferred by the first opinion that is forbidding the judge to create the law, if the first understanding is wrong, this point is impossibly accurate. Regarding to 'law as integrity', actually the existence of 'the best legal system' is simply not the essential premise.

Dworkin indeed has written that 'All interpretation strives to make an object the best it can be,'[15]and the judge must think of the past decision 'as part of a long story he must interpret and then continue, according to his own judgment of how to make the developing story as good as it can be'.[16]But this only mentioned that the elucidator received the restraint in the interpretation process, the interpretation itself had some intrinsic or subjective requirements, simultaneously was really existed.

This does not mean that this kind of interpretation requires its interpretation object be perfect. If this existing interpretation object is not perfect, for example, it is so chaotic that it cannot find any reasonable interpretation, and then the elucidator has to acknowledge his defeat and admit this as an impossible mission. But this was not the theory question, but the fact that understanding question, or is the realistic feasible question of method.

Replying such question does not need to argue too much, it has a very simple answer: practice. It is important that one method will possibly be defeated, but it doesn't prove that this method cannot certainly succeed.

The law has the integrity significance after the interpretation of the participant, it may be perfect in the eyes of the elucidator, and it is undoubtedly closed and changeless. It is just the reverse that constructive interpretation is a process reconsidering and readjusting continually.

Dworkin divided the interpretation into three stages: preinterpretive, interpretive and postinterpretive or reforming stages.[17] According to the theory of Hermeneutics of philosophy, the interpretation process is not the unitary process, but the continually circulating process. Specifically, determining the scope of interpretation object needs to be taken at a certain degree, in order to distinguish the specific phenomenon from others that do not care about. Based on the finding in interpretive or postinterpretive stages, perhaps the elucidator will find that the scope or reason preceding stage definite will be inappropriate, there are some factors that don't need to consider originally, possibly these new factors in turn prove the reason of interpretive stage or conclusion of postinterpretive stage not to be inappropriate. Therefore, the elucidator must make the adjustment, and the interpretation will keep going after the scope and reason were adjusted. In this process, it has no invaluable thing; the adjustment takes place from the beginning to an end, keeping a procedure that gets rid of old thing and join new thing. When Dworkin emphasis law ' works itself pure'[18], it is precisely referred to the law that is developing unceasingly through the participant interpreting the law.

The only right answer

Dworkin's theory supposed that the legal matter usually has the only right answer. But 'law as integrity' is a method of legal interpretation; it does not guarantee to obtain any definite result.

Hercules can always find the only right answer, but he is only an imaginary ideal character, the judge in reality is impossible to be as perfect as him. Therefore the actual result, which Dworkin acknowledged is that different judges may choose different results when they adopt the integrity law, he also admitted that none of the interpretation can pass examination, or it had two or more different interpretation passed the examination. 'But you cannot know in advance that you will reach that skeptical result. You must try first.' [19] So, the law as integrity requires the judge be with a good attitude more than a good actual result, in other words, the judge should believe that there is an only right answer for him to seek for.

Certainly, as a subjective judgment, 'the only right answer' has the obvious weakness: lacking the external evaluation method and standard. While making a decision, does the judge believe that his choice is the best or does he randomly pick one from several options? This cannot be judged from an external standpoint. Therefore, this requirement of certitude extent is hard to become the requirement of institutionalization.

However, such criticism is derived from external viewpoints, and it cannot deny the excellent significance to the participant. The 'tie' of various answers pass the examination is hardly happened, if it does not suppose that the hard case has the right answer, it cannot start seeking the right answer;

if it does not suppose the right answer, it will stop the premature to find ' the only right answer', leading to a stop which is too early so that the only solution, originally accessible, cannot be reached now. At last, it is also the most important Dworkin thought, this hypothesis is the essential part of the principle system based on Rights Thesis, and it is also the premise of judicial activities legalization: if the judge does not have the duty to make the right decision, what can endow to this decision with legal constraint.

The questions about right and prove

Dworkin said: ' we can have reason to think an answer right is different from the question whether it can be demonstrated to be tight.' [20] This doesn't indicate that Dworkin did not provide the reason to his interpretation. If proof means that ' a thundering knock-down metaphysical demonstration', the reason is not the proof, this is decided by participant's view and integrity interpretation method.

The interpretation is based on participant's view, this decides that it has no neutral standpoint; constructive interpretation imposes the significance to the object, it decides the interpretation result but does not have the objectivity. According to the viewpoint of ' law as integrity', ' propositions of law are true of they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice.' [21] This truth does not have the objectivity that resorts to the neutral third party rules, so it is controversial. However, this truth is different from individual preference. The law disputes do not have right answer such as moral and politic disputes.

Because the law disputes of the participant also follow requirement of the rationality, discussing intrinsic view that is possible and meaningful. When Dworkin announced the dislike to ‘checkerboard statutes’, he asked what can explain this dislike, his answer is the integrity works.[22] This means to the intrinsic participant that the integrity is not a fantasy but power really exists. On the other hand, the integrity is an ideal that the requirement is not always satisfied. But this reality does not show that the integrity loses its significance, it can play a role of criticizing, and that is to say, it can evaluate the situation that is not satisfied as defect based on the requirement of integrity. This is precisely the people who participate in legal practice frequently do. It is the same to ‘the only right answer’ and ‘Hercules’ in the theory of law as integrity. This is consistent with what Dworkin’s argues: ‘No doubt real judges decide most cases in a much less methodical way. But Hercules shows us the hidden structure of their judgments and so lays these open to study and criticism.’[23]

After all, the method of interpretation is different from scientific method. The significance cannot be proved through scientific methods. There is an easy misunderstanding that put ‘the best (no loophole) legal system’ to the premise of ‘forbid judge create the law’.

V Conclusion

Different people with different purposes looking at the interpretation will get different views. Someone argued that the legal phenomenon is chaotic, contradictory and meaningless. But Dworkin did not stop arguing, he gave the law with some significance such as integrity. ‘Law as integrity’ is standing in the position of the participant to interpreting the law in intrinsic

viewpoint. It is important that it only can find some limits from the external viewpoint. However, there is one thing that should not forget, two different perspectives cannot replace with each other, and it should not require that finding the external thing by using intrinsic viewpoint. Even the critics should not use their own opinions to misrepresent the theory based on different views.