

Philosophy of law

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Proper role of judges in the legal system People should know that rights are fundamentally important than rules. High court judge's base their decisions when delivering judgment on the basis that all human beings are governed by innate policies or laws of nature which are different from laws that are made. Judges should practice legal positivity in that they have to make judicial decisions based on the natural laws. This is because natural law theory states that, source-based-character is dependence upon judicially created precedents which forms the platform for law's capacity to advance the common good of all citizens, secure human rights and lastly govern with integrity (Dworkin 21).

Judges have the role to ensure that they perform their roles properly by striving to promote the common good of all citizens since rights of individuals are more important in any case. Law is viewed as a way of condemning evil or wrong doings of some people in society. Therefore, according to human positivism law ought to be accounted for because it views the central case of the government as self government of people who enjoy their freedom and have appointed the said government in power to protect them against anarchy (Dworkin 47). Law is universal in the sense that it is conceived in the reason of the leader and transferred to the reason of the subjects.

The legal system hangs together as a set of requirement since they are specifications of the duty and aspirations to treat people as entitled in a fair and just manner. That is to say that, people should be ruled as free individuals not puppets to be managed and kept by manipulation and fear. This is only possible in the legal system if the judges promote such fairness in the process and procedures of maintaining the law in order to strengthen <https://assignbuster.com/philosophy-of-law/>

the efficacy of the law, this should not be seen as judicial activism that aims to ruin the legal system.

In order to clearly understand rights, they should be perceived in the context of constraints on the types of reasons that institutions or government may legitimately act upon them. Therefore, the legal system is set up in society so as to protect the rights of individuals. In addition, rights can be well understood from the basis of simple protection for certain individual interests against the requirements of the common good. Judges should know that rights and rules are different in the legal system in that rights are more fundamental than rules because rights exist before their description in aspect of rules (Dworkin 59). This argument justifies the statement that rights are more significant than rules in legal system since they develop naturally.

In order to arrive at an ideal answer, judges must have wisdom and knowledge from the history of decisions and the comprehension of the political sphere. A right answer therefore, should be the one that produces a better fit with existing legal practices and law. In sum, theory of justice is based on the argument that all political judgments should be decided upon injunction that people are equal as human beings irrespective of their social status or situations they are in.

Judges should not be delegated with the duty of making laws because if they are allowed to make laws, they will be in contradiction to principle of separation of power. More so, they would use law retrospectively in hard cases which is against the rule of law.

Work Cited

Dworkin, Ronald. *Sovereign Virtue: The Theory and Practice of Equality*.
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Harvard: Harvard

University Press, 2002. Print.