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Attitudes toward legal principles and the principle of equality, according to Ronald Dworkin

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Abstract

The aim of this paper is to examine the various perspectives on Dworkin's writings concerning his general understanding of legal principles and specifically the principle of equality. Dworkin is regarded as one of the leading scholars, whose writings serve as a reference point for many academics and researchers. His work can be seen as a continuous effort to bridge the gap between law, morality, and politics. According to Dworkin, rules, policies, and principles collectively form the "moral fabric" of a society that safeguards the interests deemed valuable by its members, which can be articulated in terms of rights such as the rights to life, liberty, and human dignity. In summarizing Dworkin's notion of justice, he describes it as the paramount virtue of a liberal political community, while also asserting that the justice of the moment serves as a benchmark for personal ethics. Alongside various evaluations, there are frequently diverse criticisms of Dworkin's writings. However, these criticisms stem from the differing perspectives we may adopt toward legal systems. This paper is constructed using qualitative, descriptive, and epistemological approaches, drawing from a broad range of literature by various authors. In the concluding section of the paper, we will present a synthesis that outlines the recommendations and conclusions we have derived.

Keywords: legal principles, equality, positivism, Dworkin, justice

1.INTRODUCTION

The difference between rules and principles is essentially a matter of logic. Rules create a binary system that works under the excluded middle principle. For any specific situation, a legal rule is either definitively true or definitively false. In other words, if two rules contradict each other, one must take precedence over the other, which means the other must be disregarded. However, in law, rules alone are insufficient for resolving a case, and judges are more than mere enforcers; they need to interpret the rules prior to applying them, and for these interpretations, they rely on principles. The principles that Dworkin discusses, though he tries to make them clear, remain somewhat ambiguous; they refer broadly to the political and moral values that form the foundation of legal systems. In this context, Dworkin appears to refer specifically to the American model, which is based on values such as liberty and equal protection. He openly acknowledges that these principles do not possess objectivity, yet all the examples he provides indicate that they hold argumentative weight; additionally, employing these principles illustrates why not all legal decisions are equally justifiable, despite being lawful. Principles should be viewed as arguments that judges utilize to

rationalize their interpretations of rules, demonstrating that their interpretations present the law in its most favorable light.[1]

Dworkin, in his research, asserts that before we conclude that our notions of law and legal obligation are mere illusions, we need to clarify what those concepts are. We should be capable of articulating, at the very least, what we collectively consider to be wrong. However, the core issue we face is our significant struggle to accomplish this [2]. When we inquire about the nature of law and legal obligations, we are seeking a theory that explains how we utilize these concepts and the commitments that accompany their use. Without such a broad theory, we cannot determine if our practices are irrational or based on superstition.

Dworkin asserted that all legal systems are grounded in values, which means that every legal interpretation has a moral basis. He was a significant figure in modern legal philosophy. In fact, numerous articles and commentaries have been written about his works, and his impact on legal literature is regarded as highly significant. As one of the most prominent American legal scholars, he has garnered substantial attention from both the academic field and the general public. Ronald Dworkin dedicated much of his life to discussing and advocating for his innovative ideas about law and rights, viewing them as the cornerstones of all political and social thought.

2.ATTITUDES TOWARDS DWORKIN'S PRINCIPLE OF EQUALITY AND JUSTICE

Dworkin describes the law within a community as a collection of particular rules that the community employs, either directly or indirectly, to establish what behavior is subject to punishment or enforcement by public authorities. Positivism is built around several key and organizing principles, and while not every philosopher identifying as a positivist would concur with these in the manner I outline, they capture the overarching stance. [3]However, their model primarily varies in focus from the theory initially popularized by the 19th-century philosopher John Austin, which is now recognized in various forms by most legal practitioners and scholars who engage with jurisprudence. This theory is often referred to, with some historical flexibility, as "positivism."

In his analysis entitled "Ronald Dworkin – A Theory of Justice," Vujadinovic explores the concept of justice according to Dworkin, characterizing it as a fundamental principle of liberal political philosophy. He asserts that justice entails the government showing equal concern for each individual citizen and elaborates on his idea of "liberal equality," positing that "equality of resources" serves as a practical expression of the principle of "Equal Concern," which in turn provides political legitimacy to liberal-democratic governance. Dworkin argues that equal concern is the paramount virtue of any political community, or more accurately, that in the context of "equality of resources," this equality constitutes the essential virtue of the sovereign and thus signifies (the essence of) justice.[4]

Rawls also provided this definition regarding laws and rules: An arrangement of rights and duties within the basic structure is considered efficient if and only if it is

[1] Julie Allard, " *Ronald Dworkin: Law as Novel Writing"* , 5 February 2015
[2] Ronald Dworkin , . , " *The Model of Rules" (1967*). Faculty Scholarship Series. Paper 3609
[3]Ronald A. Dworkin, " *Natural Law Revisited,"* 34 Fla. L. Rev. 165 (1982), page 3
[4] Vujadinovic Dragica, *''Ronald Dworkin – Theory of Justice ''* , European Scientific Journal February /Special/ edition vol. 8, No.2 ISSN: 1857 – 7881

impossible to alter the rules or redefine the scheme of rights and duties in a way that enhances the expectations of at least one representative individual without simultaneously diminishing the expectations of some other representative individual. Naturally, such changes must align with other principles. In other words, when modifying the basic structure, we must ensure that the principle of equal liberty and the provision for open positions are not violated. What can be altered includes the distribution of income and wealth, as well as how those in positions of authority and responsibility can manage cooperative activities.

Rawls further states that, while adhering to the principles of freedom and access, the distribution of these primary goods can be modified to adjust the expectations of representative individuals. A configuration of the basic structure is deemed efficient when it is impossible to change this distribution in order to enhance the prospects for some individuals without also reducing the prospects for others [5]. I will take it that numerous effective configurations of the fundamental structure exist. Each of these configurations outlines a division of benefits derived from social collaboration. The challenge lies in selecting among them, aiming to identify a notion of justice that elevates one of these distributions as both efficient and just.

Herzog, who speaks highly of his work, is quite generous in his commendation, where he quotes.[6]: Engaging with the details of Dworkin's account can be refreshing and sometimes even enjoyable, particularly for those who may be skeptical or even strongly opposed to the overall project. A notable strength of Dworkin's work is its disregard for the familiar skeptical challenges regarding the plausibility of meaningful moral and political discussions. Dworkin has openly stated that he strongly disagrees with pragmatism. If pragmatism entails that judges should implement rules aimed at fostering what they believe to be beneficial social outcomes, then I have no interest in it. The meaning of the term is certainly inconsequential. Those fortunate enough to hear Dworkin give lectures will frequently notice his distinctive style and rhythm.

Scott J. Shapiro takes a moment to examine Dworkin's exploration of legality and moral facts. He suggests that Dworkin's main approach throughout the discourse has been to assert that legality is ultimately shaped not just by societal facts but also by moral facts. In other words, the existence and nature of positive law are ultimately influenced by the existence and nature of moral law [7]. Consequently, this argument poses a direct challenge to and threatens the positivist view of the law's nature, where legality is determined solely by social practice rather than morality. If judges are required to consider moral requirements when determining legal obligations, then social facts alone cannot dictate the law's content.

Stephen argues that Dworkin's consistent down-to-earth approach is evident throughout his work. Legal reasoning is fundamentally driven by values. Our understanding of ourselves provides the initial insight into what is valuable in our lives. By recognizing others as equals, we come to appreciate the value of their lives; thus, Dworkin connects morality encompassing our duties to others with personal ethics like equality and liberty. Our responsibilities towards others also include our

[5]John Rawls, (1971), " *A theory of justice* ", the belknap press of Harvard University Press. Cambridge, Massachusetts, ISBN 0-674-00077-3, page 60

[6]Herzog, Donald J, (2002)," *How to Think about Equality." Review of Sovereign Virtue: The Theory and Practice of Equality, by R.* Dworkin , Mich . L. Rev. 100, no. 6, page 1620

[7]Shapiro Scott J., (2007), " *The "Hart-Dworkin" Debate: A Short Guide for the Perplexed"* , Public Law and Legal Theory Working Paper, Paper Series, Working Paper NO.77, page 14

obligations to the community/state, meaning that the aspect of state morality concerning the moral justification for upholding these obligations is integral [8]. The morality that arises from individual ethics applies not only to the entire substance of the law but also to its framework. When we assess what defines specific laws, we identify moral consistency by examining the categorization of laws into legal systems and, within those systems, considering various types of law such as tort law and criminal law. Once again, many critics accuse Dworkin of being 'parochial' and of 'favoring' Anglo-American legal frameworks, particularly the American system. However, this criticism is also not justified because moral judgments are universal and should not be confined to specific systems.

In her analysis of Dworkin's views on positivism and interpretivism, Elise G. Nalbandian notes that Dworkin's initial critique of positivism has undergone significant modifications over time. Nevertheless, the most notable shift has come from his embrace of the "interpretive" theory of law, which has shown itself to be distinctly different from the earlier phases of his theory in that Dworkin has unintentionally incorporated a substantial portion of positivism into his critique of positivism, thereby (partially) undermining the aim of this critique[9]. The theories he developed are still significant in the study of jurisprudence, even if they haven't proved as helpful to Dworkin in challenging positivism as one might anticipate. This is due to his method incorporating a more blended approach to legal theory.

Freeman, discussing Dworkin, points out that, in practical terms, there is little in his perspective that he could disagree with. "If his perspective were entirely integrated into political and economic spheres, I believe it would represent as close to an ideal of justice that aligns with American ideals and political culture."[10]

3. CRITICISM AND EVALUATIONS OF DWORKIN'S POSITIONS

In this section, we will explore the views of different authors and scholars on the works of Ronald Dworkin. We'll observe that many offer high praise for his overall contributions to legal philosophy, which encompass studies in positivism, interpretivism, constitutional law, the idea of equality, and various other concepts. Conversely, as we will outline later, some scholars are entirely critical of Dworkin. They argue that certain aspects of his work are flawed and incomplete, as well as being superficially explained.

We will start this section with Levenbook's analysis, where she examines Dworkinian interpretation [11]. Among other things, she states: 'It becomes evident that Dworkin believes the optimal "interpretation" of legal practices provides a moral justification for the imposition of state obligations through sanctions. In fact, he asserts that all "interpretations" of law must strive to achieve this, and he regards this as an unquestionable premise regarding the essence of law. He describes his interpretation as instructing a judge to also take into account what morality would indicate to be the best

[8]Stephen Guest, (2016)" *Dworkin's 'one-right-answer' thesis''* , Problema: Anuario de Filosofía y Teoría del Derecho, núm. 10, enero-diciembre, pp. 3-21

[9]Nalbandian Elise G., *(2009), "Notes on Ronald Dworkin's theory of law"* , Mizan Law Review, Vol. 3 No. 2,

[10]Freeman Samuel, (2010), " *Markets&Dworkin's equality of resources"* , Boston University Law Review, Vol. 90:921,

[11] Levenbook Barbara Baum, (1986), " *The Sustained Dworkin* ", The University of Chicago Law Review, 53:1108,

justification as part of the law. Dworkin refers to justificatory value, meaning that portraying a practice in its "worst light" is insufficient for constituting an "interpretation" of said practices, since the best portrayal can still be quite negative; or the nature of an "interpretation" hinges on the beliefs of the interpreter in that if the interpreter believes they are proposing a moral justification for a practice, then they are indeed presenting an "interpretation," regardless of how flawed their moral reasoning may be regarding that justificatory moral value.

Shapiro expands on Dworkin's argument concerning positivism and interpretation. Shapiro notes: 'Certain legal positivists concurred with Dworkin on his significance within positivism. To these individuals, criteria for legality must always differentiate law from non-law purely based on their social origin and must function without moral reasoning. Historically, these positivists have been referred to as "hard" or "exclusive" legal positivists. How, then, do exclusive legal positivists address Dworkin's assertion that judges frequently adhere to principles that lack a source? One reply has been to assert that these norms do have an origin, notwithstanding appearances[12]. These principles have typically been utilized by courts over time to inform their decisions. This practice creates the presence of a "judicial custom," thus establishing a valid social origin.

Attorneys have found the chain novel to be an attractive metaphor and seem to embrace it without much regard for the deeper argument. However, why is the law compared to a chain novel? Why isn't it seen as a compilation of short stories by authors like William Trevor or Flannery O'Connor? This question is rarely posed by those who reference Dworkin's analogy. A brief look at Westlaw shows that several authors mention what they refer to as Dworkin's chain novel metaphor or his chain novel theory regarding the adherence to precedent [13]. They disregard the fundamental concept, which is the integrity theory associated with the chain novel concept. They behave as though the notion of the chain novel can stand as a theoretical framework independently.

One of the most significant critics of Dworkin is Richard A. Posner. In his article "Response, 'Conceptions of Legal Theory: A Response to Ronald Dworkin,'" he conducts a thorough examination of Dworkin's views on legal theory, as well as the relationship between law and morality. He opposes numerous principles put forth by Dworkin and questions the manner in which he presents the issues and their potential implications. Among other points, Richard A. Posner suggests [14]:

Dworkin might assert that without universal moral principles, there's no foundation for judging whether a society's actions are moral or immoral, meaning that morality becomes subjective. I disagree. It is often feasible to demonstrate that a society's customs contradict its foundational beliefs— for instance, the practice of sacrificing virgins to avert drought could be shown to have no impact on drought occurrence. If such evidence were presented, and if the society had a principle against the indiscriminate killing of its members yet persisted with the practice after acknowledging its ineffectiveness, the society would be acting immorally. If it turns out, as I believe upon examination, that all societies uphold a norm against the

[12] Shapiro Scott J., (2007), "The " *Hart-Dworkin" Debate: A Short Guide for the Perplexed"* , Public Law and Legal Theory Working Paper, Paper Series, Working Paper NO.77, page 20

[13] Waldron Jeremy, (2019), *"The Rise and Decline of Integrity",* Short version for Conference on Dworkin's Later Work

[14] Posner Richard A., (1997)Response, " *Conceptions of Legal Theory: A Response to Ronald Dworkin* ", 29 Arizona State Law Journal, page 177

indiscriminate killing of their members, this would constitute a universal moral norm—an absolute, if one prefers that term. The notable aspect of the Duworkinian perspective is its focus on the illegal, the activist, and the notion of absolute validity. While I do not dispute the political significance of appealing to universal moral values, Richard A. Posner concludes his response to Dworkin in this manner.

Another of Dworkin's staunch critics is Costa-Neto. He evaluates Dworkin's perspectives on attitudes and more, indicating that Dworkin, who famously advocated for the idea of rights as attitudes, does not assert that they are inherently absolute. He points out that Dworkin's early published work was notable for showcasing an "anti-utilitarian streak." Dworkin's legal theory is fundamentally flawed if it presumes that constitutional rights are or can be clear-cut concepts that never come into conflict. This implies that a comprehensive and cohesive theory of justice would be needed to resolve a case concerning a single constitutional right. Consequently, the assertion that false premises lead to erroneous conclusions and that balancing does not yield algorithmic solutions to constitutional conflicts are not valid critiques. They should be dismissed.[15]

As demonstrated in this chapter, perspectives on Dworkin's works vary. However, what is undeniable is the thorough and in-depth analysis that Dworkin employs. If we were to examine it closely, we would undoubtedly discover points of contention. Yet, such disagreements can only arise when we consider it from the viewpoints of the various legal and political frameworks in which we exist.

4. CONCLUSIONS

Ronald Dworkin was a prominent figure in modern legal philosophy. He dedicated much of his life to discussing and defending his groundbreaking ideas about law and rights, which he viewed as the bedrock of all political and social thought. His work can be seen as a persistent effort to bridge the gap between law, morality, and politics.

While there are numerous critiques, whether justified or not, it is certain that many of Dworkin's studies serve as a foundation for various research endeavors. Notable among these contributions is his assertion that rules, policies, and principles collaboratively function as what Dworkin terms the "moral fabric" of a society, safeguarding the interests deemed valuable by its members, including rights to life, liberty, and human dignity. In summarizing Dworkin's concept of justice, he describes it as the supreme virtue of a liberal political community, with the justice of the moment serving as a criterion for individual ethics.

The difference between rules and principles is fundamentally logical. Rules create a binary system that follows the principle of the excluded middle, where any legal rule is unequivocally true or false for a specific case. Principles, on the other hand, act as arguments that judges utilize to rationalize their interpretations of rules, demonstrating how their interpretation best represents the law.

We ought to be able to clarify, even if only roughly, what we collectively perceive as wrong. However, our main challenge lies in the difficulty of articulating this. Dworkin argues in his studies that before we can claim that our notions of law and legal obligation are mere illusions, we must first define what those concepts truly are.
Dworkin asserted that all legal systems are grounded in values, making all interpretations of law inherently moral. He was an influential figure in contemporary

[15] Posner Richard A., (1997)Response, " *Conceptions of Legal Theory: A Response to Ronald Dworkin* ", 29 Arizona State Law Journal, page 181

legal philosophy. Indeed, numerous articles and analyses have focused on his works, and his impact on legal literature is regarded as significant.

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