Jurisprudence (Law)

Name

Institution

Introduction

Whether law can be separated from morality has long been an issue of contention in general jurisprudence. Positivist philosophies hold that law is a matter of fact and therefore should be separated from morals while non-positivist philosophers argue that conceptually, law and morality are connected. According to Hershovitz (ed.), this remains a hotly contested issue among philosophers, with the most prominent being the dispute between HLA Hart and Ronald Dworkin. Ronald Dworkin is one of the most influential legal philosophers. Just like Fuller Lon, he is credited for advancing a theory of law that asserted a necessary connection between morality and law. In his philosophy that was developed over two decades culminating in his groundbreaking work 'Laws Empire', Dworkin sought to criticize Harts positivist theory.

Dworkin argues that Jurisprudence is the 'general part of adjudication, silent prologue to any decision in law. In his argument, Dworkin disagrees with Natural Law thinking into the question on the Law of Nature in aspects such as the natural law assumption on the existence of the predetermined moral principles, the link between justice and the fact of law and the proposition by natural law that truths must be determined on the basis of moral standards.

Dworkin categorically disagrees with positivism and its notion that law is actually made up of one factual, objective and identifiable standard. In his criticism of Hart, he points out issues such as the argument that laws are composed only of rules, that questions of laws and morality issues be kept strictly separate when the nature of law is investigated and the extensive discretion attributed to judges, almost amounting to legislative powers in the adjudication of 'hard cases'.

The Positivist identification of law

The main criticism advanced by Dworkin of the positivist approach to law is the conceptualization of law as that which is constituted by only one of different standards. Classical positivists such as Austin and Bentham argue that law is a set of commands that are issued by a sovereign with the power to impose sanctions while Kelsen described the law as a set of primary norms and conditional directives that are issued to officials in order to apply sanctions under certain circumstances. Hart, on the other hand, visualized law as a system of both primary and secondary rules that get validated by a rule of recognition. The main characteristic that cuts across all these positivists is that that law comprised of a single type of general standard, with anything else that fell outside of this criterion being regarded as being legally irrelevant.

According to Dworkin, the inability of these positivist arguments to recognize the existence or application of any other standard was a significant weakness. This often resulted in situations where judges erroneously adopt a position in case there is no specific law that can be applied. In these cases, Dworkin noted that Judges often use their discretion in order to arrive at a decision and thus the positivists' argument that law is a system of rules is invalidated. According to Hart, for instance, only those rules that clearly satisfy the criteria of a legal validity that is set out in the existing legal system could be classified as law, and anything else even rules of morality or any other social standards cannot be classified as law, and can therefore not be relevant in adjudication. Noting the ambiguity of this position, Hart continues to say that in normal situations, judges will always identify the legal rules that apply to particular disputes and use them to adjudicate court matters. This is not often the case. In 'hard cases' for instance, judges

sometimes run out of any applicable law. Alternatively, in some other cases, the available law may not be reconcilable and may conflict with each other and therefore may not be meaningfully utilized. In this situation, Hart argues that judges will use their discretion in deciding on the matter. This basically means that they will appeal to their own personal conceptions and opinion on what constitutes justice or injustice, along with policy matters before making a decision based on their understanding of what is fair. According to Dworkin, the adjudication process in such situations is tantamount to legislation, which effectively gives judges the ability to make laws that were hitherto not existing or to fundamentally change or alter the application and meaning of the existing pieces of legislation.

Dworkins' philosophy

In his philosophy, Dworkin argues that the law is made not just made of rules, as the positivists argue, but also other intervening standards such as principles and policies that affect the applicability of such laws. Such standards are equal to the rules with regard to their importance and their impact on the process of adjudication and legislation while differing from rules in their character and operational mode. These standards, principles, and policies, according to Dworkin forms what he referred to as the 'moral fabric' of our society and their intention is to protect valuable interests of the members of a society. Such individual and societal interests are specified in terms of abstract human rights such as life, dignity, and liberty. Notably, each society may have its own abstract rights that may be peculiar to itself, since in some cases, different societies may value different interests and therefore demand protection. This means that 'morality', in this situation may be unique to a particular society and it's, therefore, possible to objectively and empirically discover such morality through the interests protected by such

abstract rights in the society. This contextual view of ethics and morality leads to a rejection of Natural Law assertion that we can, through reason, discover principles that are higher than human will, besides being universal and immutable. This allows him to argue that morality should always form part of law, and therefore consideration for justice must carry weight in the determination of court disputes.

In distinguishing rules and principles, Dworkin notes that in the process of adjudication, rules differ from principles in their application and operation. In the application of rules, the impact is on the basis of 'all or nothing' case, requiring that all cases must be decided and discharged as per such rules. In the application of principles, it's not done in a conclusive fashion. Principles provide a reason for the decision of a case in a particular way, although it doesn't necessarily have to be done in that particular way. This is based on the premise that in some cases, principles may conflict, and in such cases, they have to be weighed against each other before a decision can be made on their application.

Due to the high cases of conflict, principles have weights, dimensions or other qualities that enable for their comparison and balancing before a choice can be made on which one to apply. On the other hand, rules are not debatable (Simmonds, 2002). They are either valid or not. They can either apply to a case or not as there is never a question of balancing a rule against another. This means that rules cannot conflict against one another and will all remain valid and applicable to specific scenarios. Principles, on the other hand, can be both valid and binding even in cases where they conflict.

According to Dworkin, when a case comes before a judge, they are not limited to the application of just a single set of standards or rules to resolve the attendant disputes. There are other standards including principles, which are available for use, allowing for a decision to be made even in 'hard cases', which have no specific rules applying to them. Such principles will be responsible for containing the judge in his decision making to ensure that his discretion in adjudication is limited. Unlike Hart who argued that Judges have a quasi-legislative discretion, Dworkin believes that Judges do not have discretion in 'the strong sense' of being actually able to make decisions that are tantamount to new laws or significant alteration of existing laws, rather, they have a 'weak discretion' in that they may apply principles and other standards in 'hard cases'. This is because, even though judges may not have specific procedures for the application of each law, they must be able to exercise a degree of judgment in the interest of fairness and justice.

Based on the operation of legal principles, there is always a right answer to the question of who has a right to win a legal dispute. Judges, in this case, need to search through the societies 'moral fabric'. In an illustration in his book 'Laws Empire', in a case pitting Riggs v Palmer (1889), the question that arose was whether a judge could allow a murdered to inherit the estate of his victim, given an existing and valid will that deposed the estate in the favor of the murderer. Under the rules of succession, the murderer had a right to inherit the estate as there was no particular exception to cases such as the above. In this situation, however, the judge, relying on a legal principle that states that no person should benefit or profit from his wrong, the court ruled that he should be denied his inheritance. This, according to Dworkin is a clear case of a decision

which could not be made entirely on the basis of existing rules of law. The application of this principle, however, resulted in a judgment that had legal authority, just as if it was made based on existing laws, which shows that ‘hard cases’ must always rely on legal standards and principles that underpin judicial decisions.

The challenge with the application of such standards and principles, according to Dworkin, however, is that most judges do not have the capacity, skills, learning, acumen and patience to provide the necessary justifications for the decisions that they make in ‘hard cases'. He, however, notes that the process of ‘hard case' adjudication is not as haphazard and capricious as the positivists think in their judicial discretion notion. Therefore, often find enough justifications for the decisions made on cases in most scenarios, even though such justifications may not be clearly articulated by each judge. In some cases, however, judges make mistakes in their decisions, and may at times fail to apply the correct legal principles in a manner that allows them to arrive at the right decision. This, however, is no fault of the particular legal standards or principles, but rather the fallibility of individual judges in their capacity as human beings and doesn't, therefore, invalidate the correctness of the decisions that are made on the basis of these principles.

Conclusion

The above discussion points at various intellectual claims that Dworkin makes regarding jurisprudence. One of the most important claims is that the law can only truly be understood if it’s considered in the context of a particular culture since laws mean different things in different cultures and are therefore likely to be treated differently. Additionally, in a liberal and democratic society such as the Anglo-American legal set up, laws are not a command of those

that have the physical ability to enforce it and therefore the state's monopoly of power and legislation is not founded on its physical force, but rather on moral authority. Lastly, the moral authority to make laws is a feature of a community that accepts that integrity is a political virtue. Accordingly, the integrity of the law creates the moral duty of citizens to obey such laws. In this case, Dworkin clarifies that integrity is not justice or fairness since citizens will still obey laws that they consider unjust, as long as they consider the law as a whole to have integrity. The application of law and adjudication of court matters is, therefore, premised not entirely on laws, but also on intervening principles, standards and policies which inform judges on the right decisions in all circumstances.

References

S Hershovitz (ed.), Exploring Law's Empire: The Jurisprudence of Ronald Dworkin. Oxford University Press, 2006

NE Simmonds, Central Issues in Jurisprudence: Justice, Law and Rights, Sweet & Maxwell 2002, 181-222.

R, Dworkin, Laws Empire, Cambridge, Mass: Belknap Press, 1986