

## Lecture Notes – *Law's Empire*, Ronald Dworkin

- Approach: Start with some of Dworkin's most basic positions, and see how they develop.
- Distinction between SEMANTIC and INTERPRETIVE theories of law.
  - Interpretation is something you do to make sense of any kind of norm governed thing or practice.
  - Consider a game
  - CONSTRUCTIVE INTERPRETATIONS: "they try to show legal practice as a whole in its best light, to achieve equilibrium between legal practice as they find it and the best justification of that practice."
- Distinction between ADJUDICATION and JURISPRUDENCE
  - We cannot draw a firm line on the interpretive approach.
  - Let's reflect on this a bit.
- The role of PARADIGMS in interpretation.
  - Test our interpretations.
  - Face a choice.
- STARTING POINT: "a fairly uncontroversial preinterpretive identification of the domain of law, and with tentative paradigms to support his argument and embarrass competitors in the familiar way."
  - Central Concept: "The most abstract and fundamental point of legal practice is to guide and constrain the power of government in the following way. Law insists that force not be used or withheld, no matter how useful that would be to ends in view, no matter how beneficial or noble these ends, except as licensed or required by individual RIGHTS and RESPONSIBILITIES flowing from PAST POLITICAL DECISIONS about when COLLECTIVE FORCE is JUSTIFIED."
  - UNPACK this...
- Collective force can only be justified if the one against whom it is use has violated some obligation.
  - How do we come to have obligations?
  - Contract?
  - Fair play?
  - Associative Obligations: friendship example.

- LEGITIMACY: “the best defense of political legitimacy is to be found not in the hard terrain of contracts or duties of justice or obligations of fair play that might hold among strangers, where philosophers have hoped to find it, but in the more fertile ground of FRATERNITY, COMMUNITY, and their attendant OBLIGATIONS.
  - Itself an interpretive property of practices...no in the emotions or psychology.
  - “True” community vs. “Bare” community
    - Special status of community
    - Concern for other members
    - Equal concern.
- Integrity:
  - Chain novel (or comic book)
    - The motivations of the characters must remain stable.
  - The idea is that we must interpret the decisions we’ve made as a community as a coherent whole.
    - The principles that best capture the whole are extended to fit new cases.
      - One Right Answer Thesis.
      - We must see the law as speaking with one voice.
- Integrity and Legitimacy are linked:
  - The method of Integrity ensures that the laws can be seen as a product of all of our past political decisions, not just of those of one segment of the community or another. They are a compromise, but not in the problematic sense of “checkerboard laws.” They are a principled compromise.
  - Legitimacy is enhanced in that these are the principles that are the products of our recognizing associative obligations to members of our community.