

OBJECTIVITY OF MORALITY (VALUE)

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Abstract: *Ronald Dworkin refers to moral standards in law as legal principles. The inclusion of principles as inherent in law raises two problems. First, the problem of the objectivity of legal decisions: how to justify or account for a judge's decision based on moral values? Is a decision based on moral values right or wrong? If the decision is based on morality, then it is possible that the decision taken will be biased by the judge's own subjective judgment, then how to get objectivity? The issue of the objectivity of morality judgment occupies a central position in Dworkin's legal theory. He believes that there is one correct answer for almost all legal issues without having to refer to elements outside of himself (non-legal elements). If moral judgment is "subjective" then the thesis about one correct answer cannot be defended. Second, Dworkin's opinion that moral values are objective-which means that demands on these values are also objective-contains another problem, namely a moral dilemma resulting from a conflict between values. To answer this problem, Dworkin developed the notion of a unified value.*

Keywords: *Ronald Dworkin; legal positivism; legal interpretation; rule; principle; moral objectivity; subjective; difficult case; one correct answer; social convention; external skepticism; internal skepticism; value pluralism and value unity.*

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Introduction

When people debate actions that are considered hate speech that insult their religion, do people involve their moral views? If it involves moral views, then the question that immediately arises is: can accurate moral judgment be reached amidst raw expressions of public feeling? In short, is the objectivity of morality it justifies possible? The answer is very possible, meaning there is objectivity in the morality it justifies. This claim should not be surprising since everyone holds that there is a right answer to moral problems. For example, people reject the notion that someone can carry out hate speech based on ethnicity, religion, race and intergroup (SARA) or religious blasphemy. This rejection is based on their assumptions about what is morally justified or not justified. Both those who think that hate speech based on SARA or religious blasphemy is not allowed or may basically agree that there is "right" and there is "wrong" when it comes to hate speech based on SARA or religious blasphemy. Every individual has the task of constructing the right or correct answer. There is no single reason that relieves people of the responsibility to construct the correct answer.

For Dworkin, truth for legal propositions is obtained by arguing and maintaining a position as a participant regarding which arguments are good and which are bad in a legal practice. It is in acts of interpretation and debate that moral values or principles as the basis for legal decisions are obtained and maintained. Moreover, Dworkin's view includes principles in law as a solution to the problems contained in the theory of legal positivism.

Dworkin differentiates principles from policies. While policies aim to advance the common good, principles function to protect individual rights. The inclusion of principles as an inherent part of law invites two problems. First, the problem of the objectivity of legal decisions: how to justify or account for a judge's decision based on moral values? Can decisions based on moral values be judged as right or wrong? If the decision is based on morality then it is possible that the decision taken will be biased by the judge's own subjective judgment, so how can objectivity be achieved? The issue of the objectivity of morality judgments occupies a central position in Dworkin's legal theory. He believes that there is "one right answer" to almost all legal problems without having to refer to elements outside himself (non-legal elements). If moral judgments are "subjective" then the thesis of "one right answer" cannot be maintained.

Second, related to value pluralism: what if there are conflicting values, while these values are equally important? A classic example is the conflict that occurs between the values of equality and freedom. Adherents of value pluralism, especially Isaiah Berlin, stated that this value conflict cannot be resolved. We cannot have both, and are forced to judge one or the other. Thus, there is no right answer to this problem because fighting for one value means sacrificing or limiting other values. Total freedom for the wolves means death for the sheep, thus Berlin describes the conflict between the values of freedom and equality.¹

Responding to the first problem, Dworkin developed ideas about moral objectivity or truth in morals. Meanwhile, responding to the second problem, Dworkin develops a theme regarding the unity of values in his book *Justice for Hedgehogs*. In this article the author will discuss these two things, namely moral objectivity and unity of values, after which he will close with a conclusion.

¹ Ronald Dworkin, *Justice in Robes*, Cambridge: The Belknap Press of Harvard University Press, 2006, p. 105.

Discussion

Moral Objectivity

For Dworkin, there is a right answer to the problems and dilemmas of morality. This claim should not be surprising because according to Dworkin, basically everyone holds the view that there is a right answer to moral problems. For example, people will react to the suggestion that abortion be permitted. Their responses are of course based on assumptions about what is morally justified and/or not justified. Both those who think that abortion is permissible and impermissible basically agree that there is a 'right' and a 'wrong' on the ethical issues involved. Dworkin is interested in exploring the truth of moral judgments. He concluded that truth in law and morality depend on appropriate arguments.² He developed this view from two initial ideas. First, from his criticism of Lord Devlin's idea of making public opinion a criterion of morality. Second, from the idea that there are practical reasons on which positivists choose provability or demonstrability - conditions that can be proven - as criteria for truth in law (for example, conformity with the rules of recognition).

Dworkin criticizes Lord Delvin's thesis that under certain circumstances the state has the right to use criminal law to enforce morality. According to Devlin, the state can consider what moral issues are by listening to the views or aspirations of ordinary people, namely based on their deepest feelings regarding issues that cause public unrest, disapproval or anger.³ In fact, Dworkin sees the contribution of Delvin's thought which pays attention to the direct relationship between democracy and morality. The idea of consensus in a democracy that allows differences in moral views is a positive idea because this idea allows each individual to be respected equally, so that the views of ordinary people are accepted in determining moral decisions.

Dworkin analyses the assumptions made by Devlin regarding the nature of morality. He argues that the idea of public morality is actually more complex than a description of the feelings of a lay person at a particular time and that Devlin is mistaken in assuming that an accurate moral judgment can be arrived at from raw expressions of public feeling. On the other hand, public feelings are material for rational study to sort out which are mere expressions of feeling and which are expressions of true, deep and justifiable moral judgment through appropriate arguments.⁴

² Stephen Guest, *Ronald Dworkin: Third Edition*, Stanford, California: Stanford University Press, 2012, p. 124.

³ This thesis was put forward by Delvin in his famous lecture in 1958. See Lord Delvin, *The Enforcement of Morals*, Oxford: Oxford UP, 1965.

⁴ Guest, *Ronal Dworkin*, p. 135.

Dworkin stated that we should present the reasons for each of our moral views.⁵ These reasons, for Dworkin, do not have to be abstract or philosophical but at least understandable and that there are justifiable reasons behind the claims we make. Dworkin's main idea is that a community consensus about morality actually has a deeper basis than a surface-level description of what people think and feel at a particular time or place and context. The foundation is at the level of reasons or beliefs that can be accounted for across conditions, time, place and context. Dworkin does not oppose Devlin's idea of a community morality (for example, democracy) and that community morality must be taken into account, but rather that he emphasizes how to achieve that community morality. In other words, Dworkin emphasizes the importance of examining the content of the community's morality. Can the truth of public moral judgments be justified?⁶

From the criticism of Devlin's thinking, it is revealed that Dworkin considers it important to pay attention to the difference between convention and public consensus as a basis for morality. For him, morality is not determined by public conventions that base moral decisions on what is in accordance with the opinions of most people. If morality were based on public convention then of course immoral practices, such as slavery, would be considered good. Meanwhile, the public consensus formed by the coincidence of certain beliefs also has the effect of weakening the justification of moral judgments. Take, for example, the assessment of rape. If rape is considered evil just because most people think it is evil then we cannot be held accountable convincingly because even most people's assumptions must be verified. Of course, conventions can provide a basis for certain behaviour, such as the convention that people must take off their hats when entering church, but if you look further, this convention is actually based on moral reasons to respect other people. In other words, conventions become moral rules not because they are dictated by public opinion but by the moral rules contained in these habits. If conventions are used as moral obligations then the goals of morality will be hampered. Conventions can be morally misleading and endanger life together, especially the rights of small people, minorities and the weak. People, for example, can argue from moral responsibility by saying that the morality of the Nazi party is different from the morality of some other people.

For Dworkin, the distinction between convention and morality is very parallel to that made by Bentham and Austin when distinguishing between 'positive' morality and 'critical' morality. Positive morality is an example of social conventions about what one should and what one should not do morally. Positive morality may thus be evil.

⁵ Ronald Dworkin, *Taking Rights Seriously*, Cambridge, Massachusetts: Harvard University Press, 1977, p. 252.

⁶ Guest, *Ronal Dworkin*, p. 126.

Meanwhile, critical morality is the standards used to assess social conventions, which are therefore more critical and fundamental so they can be accounted for.

Dworkin holds this distinction in his thoughts. In his book *Taking Right Seriously*, especially in the section "The Model of Rules II"⁷, he criticizes the conventional rules contained in the rule of recognition. He uses this argument in assessing the judicial duty to decide according to the law. According to him, judges must be able to decide according to the law when faced with hard cases that cannot be handled by the recognition rules. In addition, he considered that judicial duties could not be fully summarized by the rule of recognition because that would confuse positive morality and critical morality.

Thus, the idea that judicial duties are governed by convention is, according to Dworkin, woefully inadequate. The objectivity of morality does not depend on the external world - 'out there' - moral reality, for example in the form of public conventions, traditions or practices in general but must be extracted rationally from the facts and arguments of the moral assessment itself.

Dworkin rejects things outside of morality and emphasizes that moral responsibility is inherent in humans, not in things outside of humans. In one of his essays, "The Original Position" published by the *Chicago Law Review* in 1973, he made a critical analysis of John Rawls's very fundamental thesis, namely the idea that the starting point of moral judgment is through a process called "reflective equilibrium" and that when there is a political question, it must be responded to with the idea of an "original position".⁸

"Reflective equilibrium" is the name given by Rawls to his methodology of moral assessment. In this methodology, moral judgment is carried out by trying to achieve balance and stability between moral intuition or moral beliefs and the moral theories that we adhere to. This balance is achieved by comparing our moral intuition with structured and rational moral beliefs. Sometimes it happens that our moral intuition differs from the moral beliefs we hold, for example, when our moral intuition approves the death penalty for corruptors or drug kingpins even though we also recognize that the right to life is a human right of all people. The process of "reflective equilibrium" helps to balance these two understandings and arrive at a more fundamental judgment to be accountable before common sense.

⁷ Ronald Dworkin, *Taking Right Seriously*, p. 46-80.

⁸ Guest, *Ronald Dworkin*, p. 128.

According to Dworkin, the reflective equilibrium methodology proposed by Rawls is unclear and confusing⁹ because it blurs two models of moral judgment which Dworkin calls the natural model and the constructive model. The natural model is experienced when dealing with moral issues where there is a conflict between moral intuition and existing moral theories while no answer can be offered immediately. People assume that of course there is a right answer but that answer is far beyond our reach. We do not have sufficient understanding or ability to solve it immediately.

The second model, the constructive model, is the model proposed by Dworkin. Within the framework of this model, there is a task carried out by each individual to reconcile the contradictions between moral intuition and moral theories and especially to 'construct' the right answer. There is nothing 'out there' that relieves us of this responsibility. In *Justice for Hedgehogs*, Dworkin shows that what allows this constructive model to be implemented is Dworkin's thesis about the unity of value thesis combined with personal moral responsibility to seek a 'reconciliation' of seemingly conflicting values.

According to Dworkin, moral judgment is an obligation that must be carried out when facing any moral case. It is not right to ignore this obligation by relying solely on moral intuitions such as those usually made in natural models. Likewise, it is not correct to think that of course there is a right answer when faced with a situation where moral intuitions seem to be contradictory but this answer cannot be reached by human reason. Moral decisions must be based on genuine moral judgments based on principles, not based on assumptions, intuition, or faith. These principles are what build the objectivity of morality. In making moral judgments, people must be able to explore them. And the responsibility for making moral judgments is individual, in the sense that each person must make rational judgments and take reasonable responsibility for them when dealing with ethical issues.

One of the issues that has emerged in connection with the theme of the objectivity of morality and the correctness of moral judgments is the discourse about the possibility of balanced and equally solid arguments ('ties') so that it is judged that there is no right answer. Dworkin addresses this issue in chapter 13 of his book *Taking Rights Seriously* entitled "Can Rights be Controversial?"¹⁰ He admits that judgments about the objectivity

⁹ In *Justice for Hedgehogs*, Dworkin touches on Rawl's 'reflective equilibrium' thesis again and states that the method he developed is "more ambitious and more risky" because in Rawl's building of thought there is still acceptance of "subordination, compromise and balance between various values" (e.g. Rawls puts forward the lexical priority of freedom over equality as a value). Dworkin urges more seriously that each value should be evaluated, measured and assessed in the light of other values and should be guided by 'truth'. See Ronald Dworkin, *Justice for Hedgehogs*, Cambridge and London: The Belknap Press of The Harvard University Press, 2011, p. 263-264.

¹⁰ See Ronald Dworkin, *Taking Right Seriously*, p. 279-290.

of law and morality are interpretive judgments therefore the judgment that there are 'equally strong' arguments cannot be avoided. However, according to Dworkin, legal and moral problems always demand to be solved, requiring the best decision, namely a decision based on a true proposition. Allowing 'ties' situations to occur, for Dworkin, shows a neglect of responsibility for making the best decisions. In the context of court, for example, this kind of omission is very irresponsible because it does not pay attention to the contribution of each decision to solving the problem at hand.

Dworkin greatly appreciates 'indeterminate situations' where a proposition is not self-evident whether it is true or not and therefore requires more careful exploration and assessment. Certainty or determination regarding a true proposition must be obtained through an interpretive judgment. The uncertainty of the correct answer, according to Dworkin, is only a psychological state that does not affect the value of truth itself.¹¹ The truth can and must be sought. This state of uncertainty does not eliminate the obligation to seek the right answer.

Dworkin provides illustrative examples of this in several seminars he delivered at Oxford in 1973-1974 on objectivity in law and morality. A company holds a competition to advertise its cereal products. The five contestants were asked several questions. There is a puzzle about matching the pieces of a picture of the head and body of a famous rock star. However, there is also a contest to create charming rhyme expressions about cereal using several words that have been determined by the competition committee. From this contest several poems were formed that were equally interesting and of equal quality. Now it is the judges' job to decide which poem is the winner. In other words, the judges have to decide which poem is the 'best' because there is only one main prize for the winner of the poetry competition. The situation is that there are no precedents in this matter. Everything is completely new and decisions have to be made. Can the jury decide arbitrarily? Don't we expect judges to carry out assessments that are thorough, fair and accountable?

The urgency of judgment will be felt in more crucial situations. Take an example when a court decision has to be made regarding who is more responsible for a serious traffic accident. There is urgency there and the judge must decide appropriately.

According to Dworkin, even in a very tight draw situation, of course there are answers that are better than others; Moreover, it is very odd if the 'best' answer is not the

¹¹ Guest, *Ronald Dworkin*, p. 131.

'correct' answer.¹² The jury has an obligation to search to the best of its ability to find reasons that support one answer over another.¹³

In legal studies, Dworkin's position is between two extremes, namely 'a pre-existing moral reality' and 'a total subjectivity of values'.¹⁴ The truth of moral propositions depends on the importance of morality and our commitment when asserting propositions regarding how we should act morally. Moral propositions become objective when understood in this framework: "A true interpretive claim is true because the reasons for accepting it are better than the reasons for accepting other competing interpretive claims."¹⁵ Objectivity of judgment is characterized by the reasons for accept and reasons for rejecting it.

The above view can perhaps answer criticism that considers Dworkin's legal theory to be subjective. For Dworkin, the concept of law is interpretive, meaning it is the result of interpretation. Therefore, the legal concept is actually an 'insider's' view regarding the moral justification for coercive actions carried out by the state against its citizens.¹⁶ The idea that legal institutions are always problematic because of internal legal conflicts¹⁷, for Dworkin, is also the result of interpretation of the law. And based on this sceptical view, that is, when there is an argumentative conflict over the law, a legal practitioner has the task of resolving it. He must be able to sort the cases based on the available facts in order to get a clear understanding of the case he wants to decide.

Dworkin uses the metaphors of "outsider" and "insider" to describe two types of scepticism. He differentiates between external scepticism and internal scepticism. External scepticism, or what he dubs the Archimedean view (because Archimedes said that he could move the earth if he were outside the earth and had a lever) which rejects the existence of a metaphysical world presupposed by a moral judgment. This scepticism is "disengaged" or not involved because supporters of this scepticism feel there is no need to argumentatively base their moral judgments because basically moral objectivity does not exist. Moral judgment is really an opinion. External scepticism entails that there must be 'something out there' to enable one to judge whether a moral judgment is right

¹² "... it would be odd if the best answer weren't the right answer". Ibid.

¹³ "... the judge has a responsibility to search out the best of abilities reasons that favor one side rather than another." Ibid.

¹⁴ Ibid.

¹⁵ "A true interpretive claim is true because the reasons for accepting it are rather than the reasons for accepting any rival interpretive claim." Ronald Dworkin, *Justice for Hedgehogs*, p. 154 and Guest, *Ronald Dworkin*, p. 132.

¹⁶ Ronald Dworkin, *Justice for Hedgehogs*, p. 405-407.

¹⁷ The skeptical view 'which sees law from the outside' argues that law as an institution is inherently flawed and conflicting within it. People in the law (the insider), according to this skepticism, cannot realize it because the reasons for the legal defects arise from the nature of the law itself. See Guest, *Ronald Dworkin*, p. 133.

or wrong. And, because there is nothing out there to base this judgment on then this external scepticism is born. For them, there are actually no facts about morality because there is no scientific evidence about it, so talking about the objectivity of morality is irrelevant.

Dworkin rejects this kind of external scepticism. According to Dworkin, the statement, for example, that torturing babies is wrong does not require an external judgment, or does not require any other grounding from 'out there' about the objectivity of the statement. This statement itself contains the weight of objective morality. The term objectivity associated with morality is used, according to Dworkin, not to provide a metaphysical grounding for our moral claims but rather to reiterate them, or to confirm the content of those claims.¹⁸

In contrast, Dworkin accepts internal scepticism, which he believes is 'engaged'. He gives the general example that in experience, someone who says that there is no morality because God does not exist is actually involved ('engaged') with moral propositions. Basically, behind this statement, the person assumes that morality exists if God exists. Dworkin refers to other realms of literature and art and states that ideas like this are also present in the realm of literature and art.¹⁹ For example, when a sceptic judges that a reasonable interpretation of Hamlet is impossible to achieve because the performance lacks coherence, he is actually grappling with the substance of his own argument that led him to adopt a sceptical stance. He basically demands coherence in interpretation. Internal scepticism thus leads to a further deepening of moral judgments, which is very necessary in the process of interpretation towards the truth of moral claims.

Dworkin's opinion that moral values are objective—which means that demands for these values are also objective—invites another problem, namely moral dilemmas resulting from conflicts between values. To answer this question, Dworkin developed the idea of the unity of value.

Unity of Value

Value pluralism can also pose a serious challenge to legal theory as Dworkin interprets it. Dworkin believes that there is a right answer to almost all legal and moral questions. However, what happens if two or more values that are equally important and incommensurable conflict with each other. Can we solve this dilemma? Is there a correct

¹⁸ “We use the language of objectivity, not to give our ordinary moral or interpretive claims a bizarre metaphysical base, but to report them, perhaps in more precise way, to emphasize or qualify their content.” Ronald Dworkin, *Law's Empire*, Cambridge: The Belknap Press of Harvard University Press, 1986, p. 81.

¹⁹ Guest, *Ronald Dworkin*, p. 134.

answer to this problem? To answer this problem, Dworkin developed a theme regarding the unity of values in his book *Justice for Hedgehogs*.

Value Pluralism

Adherents of value pluralism consider that values are plural, cannot be compared with one another, and can conflict with each other. This understanding has developed into popular thinking among the general public, politicians and academics.

Value pluralism argues that there is a possibility that conflict between values cannot be eliminated from human life. Isaiah Berlin revealed:

“... everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quite conscience. If the liberty of myself or my class or nation depends on the misery of a number of other human being, the system which promotes this is unjust and immoral. But if I curtail or lose my freedom in order to lessen the shame of such inequality, and do not thereby materially increase the individual liberty of other, an absolute loss of liberty occurs. This maybe compensated for by a gain in justice or in happiness or in peace, but the loss remains.”²⁰

Similar opinions also came from Joseph Raz:

“Moral pluralism is the view that there are various form and styles of life which exemplify different virtues and which are incompatible. Forms or styles of life are incompatible if, given reasonable assumptions about human nature, they cannot normally be exemplified in the same life. There nothing to stop a person from being both an ideal teacher and an ideal family person. But a person cannot normally lead the life both of action and contemplation ... nor can one person possess all the virtues of a nun and the mother.”²¹

Value pluralism sees conflicts between values and these conflicts cannot be resolved. Thus, a harmonious whole is not only unattainable, but also incoherent because to fight for one value means having to sacrifice or limit other values.²²

According to Berlin, what is the main characteristic of this conflict is that in this conflict there are values that we have to sacrifice. This conflict became a kind of tragedy. We cannot have all the values in one life, even though we consider that without these values

²⁰ Isaiah Berlin, *Liberty; Incorporating Four Essays on Liberty*, Oxford; Oxford University Press, 2002, p. 172.

²¹ Joseph Raz, *Morality of Freedom*, Oxford: Clarendon Press, 1986, 1995.

²² Ronald Dworkin, *Justice in Robes*, p. 108.

our life is imperfect. We must choose between conflicting values, and every choice we make always includes irreparable loss.²³

Dworkin disagrees with Berlin's view above. In *Taking Rights Seriously* (1977), the solution to resolving the conflict between the values of equality and the value of freedom is to compromise freedom. However, later in *Justice for Hedgehogs* (2011), Dworkin developed a much better idea, namely the concept of value unity which opposes conflict between values.

No Conflict of Values

“The fox knows many things, but the hedgehog knows big thing”. This quote comes from the classic poem by Archilochus which was later popularized by Isaiah Berlin to defend value pluralism. For Dworkin, values are not only coherent, but mutually supportive of each other.²⁴

For Dworkin, humans have the ability to judge activities, objects, events, or anything else because humans have the ability to understand what is good and why it is said to be good. In other words, humans are able to understand that something is said to be good because of the value contained in it. Values themselves are not reductive. Values are interconnected and dependent on one another. A particular value is related to other values, it can be the main element, or as a consequence, or related in other ways which can help us to explain certain values by referring to other values.²⁵ In short, values are not fragmented, but form a unity.

There is a unity of values because the truth of certain moral values does not stand alone, but is related to the truth of other values. The truth of a correct moral judgment consists of the truth of other moral values and its truth is a constitutive part of the truth of other moral values.²⁶

Moral reality itself is the reality of arguments, not raw facts. A value is said to be true or good only if it has a basis that is strengthened by other values. Therefore, according to Dworkin, there is actually no conflict between moral values. What happens is a mutually supportive relationship between values. The conflicts that we find at the surface level

²³ Ibid, 105, 109

²⁴ Ronald Dworkin, *Justice for Hedgehogs*, p. 1

²⁵ Ibid, p. 113-115

²⁶ The truth of any true moral judgment consists in the truth of indefinite number of other moral judgments and its truth provides part of what constitutes the truth of any of those others. Ibid, p. 116.

do not indicate the nature of value division/fragmentation, but rather indicate the existence of a more fundamental value unity.²⁷

Dworkin gives an example of a case.²⁸ A colleague asks for your opinion on a draft of his book, and you see that the draft of the book he is writing is poor. You're confused about what to comment because you're afraid of being cruel if you're honest, but on the other hand you don't want to lie. What should you do? The easy answer is that you choose what is more important, being nice to your colleagues - by telling them the truth - or being honest. But, how should we choose if both values are equally important? Is it justified to act based on one value at the expense of another? Is there no right answer in this case because by choosing one, we sacrifice the value of the other? Does the value of kindness really conflict with the value of honesty?

With his thesis regarding the unity of values, Dworkin rejects that in this case the value of goodness is in conflict with the value of honesty. With this, he also rejects solutions by thinking that we have to choose one value at the expense of other values. According to Dworkin, moral obligations are not final. We always reinterpret the moral values we use.²⁹ Usually we easily understand the value of kindness and honesty in everyday life. However, sometimes there are situations where these two values appear to conflict. How to deal with this situation?

The question to ask when faced with this situation is: what is the right action we should take? Are these two values really contradictory? These questions will make us think further about these two seemingly contradictory values. Can saying what a colleague wants be said to be an act of lying? Is telling the truth that the draft he made wasn't good considered cruel? By reinterpreting our moral obligations and seeing them in the framework of a unity of values, we can solve the dilemma we face.

Dworkin revealed that the concept of moral values is not something fixed and ready to use. Moral concepts are interpretive: how they are properly used is a matter of interpretation, and people who use them disagree about the best interpretation.³⁰ In other words, the concept of value is a concept that is controversial or invites debate. We use the concept to describe moral values, but we disagree about these values and

²⁷ Value judgment are true, when they are true, not in virtue of any matching but in view of the substantive case that can be made for them. The moral realm is the realm of argument, not brute, raw fact. Then it is not implausible - on the contrary- to suppose that there are no conflicts but only mutual support in that realm. Or, what comes to the same thing, that any conflicts we find intractable show not disunity but a more fundamental unity of value that produces these conflicts as substantive results. Ibid, p. 11.

²⁸ Ibid, p. 118.

²⁹ Ibid, p. 119.

³⁰ "Moral concepts are (as I have already begun to call them) interpretive concepts: their correct use is a matter of interpretation, and people who use them disagree about what the best interpretation is." Ibid, p. 2-4.

how they should be expressed. The disagreement that occurs concerns values as the moral basis of a particular practice, and not regarding the facts or meaning of moral terms as stated in the dictionary.

The basis of a particular value, such as the value of equality and freedom, requires other values besides the value in question. We cannot simply use the value of freedom to defend the concept of freedom because the argument would be circular and weak. This means that an explanation of the question of why freedom should be fought for requires other values. This is what makes values integrated with one another.³¹

Therefore, we must reinterpret our moral obligations especially in situations where we face moral dilemmas. Regarding the case example above, many people think that telling your colleague how things should be is not cruel. It will even help because our comments - even if they are not liked - can be used as material for consideration in improving the draft. Or, covering up some facts - so he won't be discouraged by our "honesty" - is not a lie. Moreover, this is not linguistically confusing. We still know the general definition of kindness and honesty.³²

Thus, we cannot rigidly understand our moral obligations, for example understanding the obligation to be honest as the obligation to speak truthfully in all situations. In Indonesia it is common, when someone is visiting - because of politeness - he says that he has eaten even though he has not. Can this be called lying? If we refer to the Indonesian dictionary, the answer is yes. However, in general people will say that this action does not violate moral values, in fact it is appropriate to do so.

This is because the value of honesty does not stand alone. The obligation to be honest is based on other moral values, for example the value of responsibility: we must have the courage to admit the mistakes we make and not run away from them. Therefore, in a situation where we have to lie to save the life of a thief who is about to be attacked by a mob, we cannot force ourselves to remain honest. Because, in that situation, honesty does not have a strong moral basis. On the other hand, we have an obligation to protect other people's rights to life, so acting honestly in this situation is morally wrong. Unless we really intend to make the thief free from the law - because it turns out he is our relative or friend - then our actions are definitely wrong.

The examples above reinforce the concept of unity of value. Why is it important to see values as a whole? According to Dworkin, our understanding of values will shape our attitudes towards ourselves and the world around us. One of them is the value of an action which is a choice for us which is the reason for us to do it. This makes values

³¹ Ibid, p. 6-7.

³² Ibid, p. 120.

related to the quality of our life, our life will be good if we act and behave in accordance with what we value as good. And, we must have reasons for our judgments. Something that we must be able to account for based on other values.

Furthermore, Dworkin expresses what he calls Kant's principle: A person will gain the dignity and self-respect that are so necessary for a successful life if he shows respect for humanity itself in all its forms.³³ Because of this, we cannot view values as something that stands alone and conflicts with each other because this means that to achieve certain values there will always be other values that must be sacrificed. Kant's principle requires us to see these values as something integrated.

Law as Morality

The view of the unity of value is also applied by Dworkin to the realm of law. With the concept of unity of value, not only can the separation between morality and law be bridged, but the two can be united, by making law a "branch" of morality.

However, Dworkin says this has not always been his position:

“When, more than forty years ago, I first tried to defend interpretism, I defended it within this orthodox two-system picture. I assumed that law and morals are different systems of norms and that the crucial question is how they interact. So I said... that the law includes not just enacted rules... but justifying principles as well.”³⁴

With this in mind, Dworkin does not intend to challenge the traditional understanding that sees "law" and "morality" as two different things. However, he states that the traditional understanding of the relationship between law and morality as two different domains is unsatisfactory. Therefore, Dworkin offers a different intellectual topography, namely treating law not as a separate thing but as a branch of morality.³⁵

Dworkin believes that there is a fatal flaw if we treat law and morality as two separate systems of norms (two-system picture), namely that there is no neutral starting point where the relationship between the two as systems that should be separate can be adjudicated. This means, to get an answer to whether law and morality are related contingently (positivism) or necessarily (interpretism), understanding the two system picture already makes assumptions from the start. This initial assumption determines

³³ “A person can achieve the dignity and self-respect that are indispensable to a successful life only if he shows respect for humanity itself in all its forms.” Ibid, p. 19.

³⁴ Ibid, p. 402.

³⁵ “...to suggest that this traditional understanding, which encourages us to chart relations between two different intellectual domains, is unsatisfactory. We might do better with a different intellectual topography: we might treat law not as separate from but as a department of morality.” Dworkin, *Justice in Robes*, p. 34.

whether we ultimately embrace positivism, interpretism, or another view. As a result, understanding the two systems only produces circular arguments.³⁶

Thus, understanding two systems faces an insoluble problem: this position asks questions that cannot be answered except by assuming answers from the start.³⁷ For this reason, Dworkin offers an understanding of one system: including law as a branch of political morality.

There are several differences made with this system when compared to understanding the two systems. First, at the theoretical level: legal philosophy and practice will experience changes. Both positivism and interpretism are seen as normative political theories so that the substance of the debate between the two views shifts to the political realm (for example, which is more democratic between making decisions based on the results of existing legislative decisions - even though they are counterfactual - and leaving the issue to the moral sensibilities of judges who are not democratically elected?).³⁸ Jurisprudence has become more challenging and important. By making legal theory a branch of legal philosophy and political philosophy, it will make both fields more in-depth.

Second, in the case of bad law: both the view of positivism (which considers evil/bad laws to still be valid, but too bad to be implemented) and the view of interpretism/natural law theory (a bad law is too evil to be called law) are accepted by one's understanding of a system. The essence of both views is that for moral reasons evil laws cannot be applied. With this, the classic legal debate about bad law becomes just a verbal debate.³⁹

Third, on the issue of partial law enforcement. In understanding one system, Dworkin differentiates legal rights from other political rights. Legal rights are part of political rights with special characteristics, namely that they are enforced upon request through court institutions without further need for law-making activities. For example, there was a bad legal problem, namely the implementation of the Fugitive Slave Act created by the American Congress before the Civil War which stated that slaves who escaped to states that did not recognize slavery had to be returned to their owners. With a fairness structure that differentiates legal rights from other political rights, the application of the

³⁶ Ronald Dworkin, *Justice for Hedgehogs*, p. 403.

³⁷ "The two-system picture therefore faces an apparently insoluble problem: it poses a question that cannot be answered other than by assuming an answer from the start." Ibid.

³⁸ According to Dworkin, the debate between legal positivism and interpretism is better seen as a debate between normative political theories rather than seeing it as a debate regarding the concept of law. By viewing the debate in this framework, we can correct some historical mistakes. Many legal theories depart from the nature of legal concepts to theories of rights and obligations. Dworkin suggests the opposite: vocabulary should follow political arguments, not vice versa. Ibid, p. 407.

³⁹ Ibid, p. 411 - 412.

law can be challenged without changing existing laws because the authority for this lies with the legislative body. Slave owners could claim their constitutional rights, but their demands were defeated by stronger moral arguments regarding human rights.

Fourth, in the realm of procedural morality: the ongoing debate regarding law and morality focuses on the content of law, but ignores procedures. It seems that educated lawyers consider it clear that the method for making laws is a matter of social conventions that regulate in a fixed and comprehensive manner the procedures for making laws. This assumption is essential in understanding the two systems. However, this view has gaps. For example, legal positivism is difficult to maintain if the judges themselves disagree on important issues regarding constitutional procedures. By understanding one system, this problem is solved: by treating the structured principles that separate law from the rest of political morality as political principles that require moral reading.⁴⁰

Conclusion

Dworkin formulated his own legal theory. Law, for Dworkin, has a broader scope than just a system of rules as in Hart's thinking. For Dworkin, law also includes principles.

By incorporating principles into law, if there are no clear rules that can be used as a reference, judges can interpret relevant laws or past court decisions based on the

⁴⁰ Ibid, p. 413.

principles. Dworkin himself believes that in this way the correct answer will be found even in difficult cases. He will elaborate this view as a legal concept as an interpretation in Law's Empire.

To strengthen his argument, Dworkin develops ideas about moral objectivity and the unity of values. Values, including morals, are interpretive concepts: how they are used correctly is a matter of interpretation. The objectivity of morality is achieved by obtaining reasons that strengthen it that can be justified.

Furthermore, Dworkin explained that conflicts between values at the surface level can be resolved by reinterpreting these values and achieving "unity" at a deeper level. With this, conflicts between values do not have to end in tragedy by sacrificing one of the values as in Berlin's thinking.

Dworkin's views on law evolved. At the beginning of his thinking, Dworkin saw morality and law as two different and interacting systems with the inclusion of principles as part of the law. At the end of his thinking, he made law a branch of political morality. However, one thing remains constant: law, like morality, has an argumentative and interpretive character. For Dworkin, the best legal theory that can accommodate these two legal characters is legal theory as interpretation.

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