Munich Personal RePEc Archive

King, Fuller and Dworkin on Natural Law and Hard Cases

Rashid, Muhammad Mustafa

University of California, Davis, University of Detroit Mercy

19 May 2017

Online at https://mpra.ub.uni-muenchen.de/100958/
MPRA Paper No. 100958, posted 17 Jun 2020 10:19 UTC

Abstract

The debate between natural law and positivist law has been received much attention. Ronald Dworkin exposes the limitation of positivist law through the argument of hard cases. This argument is furthered strengthened when we apply the interpretation of Martin Luther King Jr and the voluntarist natural law tradition, and Lon Fuller's 'procedural view' and the application of the 'principles of legality'.

Keywords: Natural Law, Positivist Law, Hard Cases, Ronald Dworkin, Lon Fuller, Martin Luther King Jr.

JEL Codes: B40, K1, K4, K40, L6, M10, P00, P16, Z12, Z18

King, Fuller and Dworkin on Natural Law and Hard Cases

In this paper I will argue for the position that the proper way to decide ‘hard cases’ is through the application of the natural law approach. This is primarily because natural law theory, considers “moral evaluations” as a necessary part of determining the content of the legal system. This approach is distinguished from the legal positivism approach, which in brief insists on a separation of law and morality. Therefore, to support my argument I will employ the interpretation of three prominent natural law theorists, Martin Luther King Jr, Lon Fuller and Dworkin.

According to Dworkin, a hard case occurs when, “no such established rule can be found” (Brix, 86). Dworkin gives us two examples of hard-cases and these are the cases of *Rigs V Palmer* and *Henningsen V Bloomfield*. In *Riggs*, the issue that arises is if an heir should inherit the will of his grandfather even though he is guilty of murdering his grandfather. In this case, there is no established rule that states that the heir should or should not receive inheritance because he is guilty. In *Henningsen* the appeal was to set a higher standard of liability for the automobile company. In this case again there was no prior established rule that that set a higher standard of liability in the case accidents occurring from defective parts. More examples of hard-cases can be found in the era of Martin Luther King Jr, when he was imprisoned in Birmingham. King writes his *Letter from Birmingham Jail* acutely aware of the injustice prevalent because of the segregationist laws. There were a few if any rules established for cases that resulted from racial discrimination.

Even though there are divisions in natural law philosophy, the central theme present is that, “moral evaluation is considered central or necessary to *either* determining the content of legal rules, evaluating legal status of particular rules or systems, or the analysis of the nature of law.” (Brix, 99). Hence a judge who ascribes to a natural law view of legal philosophy, would consider the moral evaluations of law to be of utmost importance when deciding ‘hard cases’ where new

rules need to be formulated. King, Fuller and Dworkin, through their interpretations provide further insights as to how a judge may reason about rule formulation when deciding on hard-cases, while adhering to natural law philosophy. The natural law view that King appeals to in his *Letter from Birmingham Jail*, can be described as a form of voluntarist traditional natural law. It is divine commands that create moral values and hence, “a just law is a man-made code that squares with the moral law, or the law of God. An unjust law is a code that is out of harmony with the moral law.” (King, 3).

King looks at the ‘content’ of law prevalent in his time and compares them to the ideals set by his traditional predecessors such as St. Thomas Aquinas and St. Augustine and hence, “an unjust law is a human law that is out of harmony with natural law.” (King, 3). Furthermore, for King the effect that a law has on a human’s personality is of importance and hence a just law uplifts human personality and an unjust law does not. King further provides an example where the unjust law is an infliction on the minority imposed by a majority, forcing them instead of compelling them. Therefore, an unjust law is not binding although a just law has a binding force to it.

A judge that employees the natural law philosophy can choose to work within the tradition of his predecessors. While staying true to traditional natural law philosophy, Lon Fuller has provided for a much more sophisticated position. Lon Fuller treats law as a process or function, rather than any other object of study of science. For Fuller, the law is not a ‘one-way projection of authority’ (Brix, 77), rather Fuller makes the claim that it is better understood as, ‘involving reciprocity between officials and citizens’ (Brix, 77). Furthermore, for Fuller the ‘moral ideals’ towards which we strive is what makes law a *process*. He contrasts law with managerial direction, “which is attuned to attaining the objectives of the ‘rule maker’ – as contrasted with law, whose purpose is primarily helping citizens to coexist, cooperate and thrive” (Brix, 77). Therefore, for Fuller, establishing a new rule of law in ‘hard-cases’ would not be merely assigning it

characteristics, but "an official response to certain kinds of problems- in particular, the guidance and coordination of citizens' action in society." (Brix, 78).

Fuller further provides, guidance to natural law philosophers by developing his 'procedural' view and offering a list of principles which he terms, 'principles of legality'. In Fuller's view these principles serve as the criteria to test the 'minimal duties' of the government and they also set out to define the direction of excellence to which the government should strive for. Therefore, they provide judges with an invaluable framework to assess the effect of a new rule when hard-cases arise. Fuller's principles make it easier for law-makers to promulgate new rules and hence aid in guiding the behavior of citizens. A popular objection to Fuller is that, even though his principles maybe adopted, the theory proposes an efficient judicial system and not necessarily a moral judicial system. Although this criticism is diminished significantly while employing Dworkin's argument and the idea of a moral scale.

Ronald Dworkin, who originally initiated the problem of hard-cases in, *"Law as Integrity",* is regarded to be a proponent of an interpretative theory of law. Even though Dworkin's approach is that, one should find the best interpretation available from the relevant data, he is regarded as a natural lawyer because he does not endorse a separation of morality from law and on the contrary, the best interpretation is one, "which presents the legal system as better morally." (Brix, 84). In formulating his theory Dworkin, takes into consideration not only principles, but also rules and policies. According to Dworkin, the principles are an integral part of the decision-making process when hard-cases arise. His definition of a principle states the importance in terms of justice and fairness. Therefore, "I call a principle a standard that is to be observed, not because it will advance or secure an economic or political or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality" (Dworkin, 75).

Dworkin's interpretation of what a principle is important for a judge who adopts natural law philosophy and comes across hard-cases. This is because by applying principles and including his best interpretation of the data, the judge is able to formulate a rule where one did not previously exist and do so by keeping true to the spirit of justice and fairness. A further reason why principles in addition to rules facilitate the rule-making process is because, unlike rules, principles are not all or nothing. Principles have a 'weight and dimension' (Dworkin, 78), and hence when a conflict arises, the principles weight and importance can be taken into account to resolve the conflict.

What makes the cases hard to the legal positivists is that, firstly there is no established rule, second if there is a rule to be created by the discretion of a judge then, what the positivist lacks is a criterion for that rule making. Therefore, through Fuller's distinction between law as a process and function, a new rule cannot be limited to certain characteristics and hence it should have a function. Therefore, for a natural law philosopher, there is a function to law which extends beyond merely applying characteristics to the rule and therefore according to Dworkin it becomes the responsibility of the judge to provide for the best interpretation in accordance with a moral scale.

In the cases mentioned by Dworkin and the continuous fight against the laws of discrimination since the era of King, it is evident that natural law philosophy is in play. In *Riggs V Palmer,* there is no ruling that says that the murderer should not receive his inheritance. However, the court denies the murderer his inheritance and cites the principle, "no one shall be permitted to profit from his own fraud" (Riggs, 75). Hence this decision reveals that the formulation of law and rules include principles and the system adheres to a spirit of justice and fairness. In *Henningsen* again the court cites a more specific principle, "the courts generally refuse to lend themselves to the enforcement of a 'bargain' in which one party is has unjustly taken advantage of the economic necessitates of the other. (Riggs, 76).

In conclusion, I think the proper and best way to solve hard-cases is through the application of the natural law approach. This is primarily because, the natural law approach takes into account the moral evaluations of the rule being written. Furthermore, the natural law approach, proposed by Fuller provides a moral function to a new rule and law and therefore, in hard cases where a rule is not evident, the new rule provides guidance for the citizens of the society. Furthermore, the application of principles as proposed by Fuller provides a framework from which to derive rules. Even though Dworkin, does not prefer to use the label of natural-law when proposing his theory, his theory stays true to the central tenant of natural law and that the interpretation of the available data should be the best one in accordance with a moral scale. As King observes the words of St. Augustine, an "unjust law is no law at all" (King, 3), and even though the strong reading of St. Augustine is rejected by many prominent jurists and philosophers due to its contradictory nature, once we start to think that law has a teleological purpose, a purpose that extends beyond the mere application of characteristics to rules, we start to appreciate the words of St. Augustine and the value of justice and fairness.

Works Cited

Brian H. Bix The Oxford Handbook of Jurisprudence and Philosophy of Law
Edited by Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro Print Publication Date: Jan 2004, Subject: Law, Jurisprudence and Philosophy of Law Online Publication Date: Sep 2012, DOI: 10.1093/oxfordhb/9780199270972.013.0002

Dworkin, Ronald. *Taking Rights Seriously.* Cambridge: Harvard University Press 1977.

King. Martin Luther, *Letter from Birmingham Jail.* August 1963.

Norman E. Bowie, TAKING RIGHTS SERIOUSLY. By Ronald Dworkin. Massachusetts: Harvard University Press. 1977. Pp. 563., 26 Cath. U. L. Rev. 908 (1977). Available at: https://scholarship.law.edu/lawreview/vol26/iss4/10

Rashid, Muhammad, (2020), Case Analysis: Enron; Ethics, Social Responsibility, and Ethical Accounting as Inferior Goods?, MPRA Paper, University Library of Munich, Germany, https://EconPapers.repec.org/RePEc:pra:mprapa:98441.

Rashid, Muhammad, (2019), St. Thomas Aquinas and the Development of Natural Law in Economic Thought, MPRA Paper, University Library of Munich, Germany, https://EconPapers.repec.org/RePEc:pra:mprapa:93435.

Rashid, Muhammad, (2019), A Survey of US and International Financial Regulation Architecture, MPRA Paper, University Library of Munich, Germany, https://EconPapers.repec.org/RePEc:pra:mprapa:93447.

RASHID, M. (2018). Analysis of political economy, international political economy, globalization and its importance to public finance. *Journal Of Economics And Political Economy, 5*(4), 480-487. doi:http://dx.doi.org/10.1453/jepe.v5i4.1814

Rashid, Muhammad, (2019), Exploitation in a Disruptive and Unjust Gig-Economy, MPRA Paper, University Library of Munich, Germany, https://EconPapers.repec.org/RePEc:pra:mprapa:95328.

Rashid, Muhammad, (2018), Proliferation of Globalization and its Impact on Labor Markets in Advanced Industrial Nations and Developing Nations, MPRA Paper, University Library of Munich, Germany, https://EconPapers.repec.org/RePEc:pra:mprapa:90497.

Rashid, Muhammad, (2019), International Financial Credit Crises; Lessons from Canada, MPRA Paper, University Library of Munich, Germany, https://EconPapers.repec.org/RePEc:pra:mprapa:94657.

Sharun W Mukand, Dani Rodrik, The Political Economy of Liberal Democracy, *The Economic Journal*, Volume 130, Issue 627, April 2020, Pages 765–792, https://doi.org/10.1093/ej/ueaa004