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Limits of Logic and Procedure

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LIMITS OF LOGIC AND PROCEDURE

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Abstract: The idea that the American legal system is meant to foster justice is agreed upon even by proponents of the most irreconcilable methods of legal interpretation. Going back to the intentions of the Founders, the judiciary “may truly be said to have neither force nor will, but merely judgment (Federalist 78). The efficacy of the Supreme Court depends on its structural legitimacy and public acceptance of its procedures. The Constitution was intended to stand in perpetuity, protecting the rights of the people for all time, according to the concretized will of the people at the Founding, as embodied in the Constitution. However, practical considerations beyond this agreement that the judiciary is intended to secure justice as delineated by the Constitution generate great controversy. Achieving the original goal of the judiciary becomes complicated when viewed in light of the discord between universal statements of the law and particular instances. This paper explores the relationship between justice, rationality, and precedent in order to answer the question: How can Supreme Court Justices reconcile with the gaps between formal logic, procedural legitimacy, and substantive justice? The approaches of legal pragmatism, originalism, and Dworkin’s moral reading are explored.

The idea that the American legal system is meant to foster justice is agreed upon even by proponents of the most irreconcilable methods of legal interpretation. Going back to the intentions of the Founders, the judiciary “may truly be said to have neither force nor will, but merely judgment.”¹ *Federalist 78* stresses that the judiciary has neither an independent sword (method of enforcement) nor an independent purse (method of payment), and will, therefore, ultimately “depend upon the aid of the executive arm even for the efficacy of its judgments.”² Consequently, the judiciary was intended to be a constrained branch of government solely designed to fairly settle disputes according to the law. The efficacy of the court depends on its structural legitimacy and public acceptance of its procedures. The Constitution was intended to stand in perpetuity,

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¹“Federalist No. 78.” The Avalon Project, accessed August 9, 2021. https://avalon.law.yale.edu/18th_century/fed78.asp

² “Federalist No. 78.”

protecting the rights of the people for all time, according to the concretized will of the people at the Founding, as embodied in the Constitution. In a way, it is clear that the will of the people at the Founding was intended to reign supreme over the will of all future generations: the Constitution would become fundamental law. However, practical considerations beyond this agreement that the judiciary is intended to secure justice as delineated by the Constitution generate great controversy. Achieving the original goal of the judiciary becomes complicated when viewed in light of the discord between universal statements of the law and particular instances. This paper will explore the relationship between justice, rationality, and precedent in order to answer the question: How can Supreme Court Justices reconcile with the gaps between formal logic, procedural legitimacy, and substantive justice?

The judiciary is tasked with fairly deciding cases, which involves closing the gap between universal principles and particular situations. Typically, it is understood that if one agrees with the following proposition: If A then B, If B then C, If C then D, one is committing oneself to: If A then D. However, in terms of the law, this conclusion is not always true. A judge may be committed to the universal proclamations of the first three conditional statements, but when faced with a particular situation, decide that the fourth conditional is not true. Catherine Wells describes the difference between two methods of legal interpretation in her book, *Oliver Wendell Holmes: Making of Modern American Law*. The first method is mechanical, and leaves no room for the rejection of “if A then D” if the previous premises are accepted. The other method is titled the pragmatic method. Under the pragmatic method of judicial decision making, “rules are not statements written on a piece of paper.”³ Instead, rules are a routinized way of “responding to like cases,” where the decision-making process outlined by precedent bears weight in deciding future

³ Catherine Wells, *Oliver Wendell Holmes: A Willing Servant to God* (Cambridge: Cambridge University Press, 2020), 156.

cases, not the substance of the precedent itself.⁴ Wells explains that Justice Holmes believed, "what is expedient for the community concerned" should overrule logic, which "create[s] the appearance that each decision follow[s] syllogistically from existing precedents."⁵ Justice Holmes viewed precedent as a series of cases that illustrate practical policy, within their own contexts. For example, if a court is trying to decide if an employer should be held liable for an injury their employee incurred at work while on a lunch break, but taking a work-related phone call, the importance of the decision as precedent is the *way* the court decided the case, as opposed to the actual substantive decision reached by the court. The substantive decision in this instance would be if an employer can still be liable for an employee's injury even if the employee is not physically at their workplace, but is doing work assignments.

Sometimes, judges decide cases broadly, and create legal doctrine which enumerates various considerations for future application of the law. These legal doctrines contain the primary importance of the cases as precedent. For example, in *Youngstown Sheet & Tube Company v. Sawyer*, Justice Jackson distinguished three possible relationships between the executive power and Congressional authority. This case concerned the constitutionality of President Truman's seizure of the steel mills during the Korean War. The workers of the steel mill were striking over poor working conditions, and the American government was concerned with the decrease in steel production due to increased demand of steel for war purposes. In a 6:3 decision, the Supreme Court decided that the President did not have the power to seize control over the mills. However, the precedential significance of this case was not the idea that the President cannot seize control of labor disputes, because it is plausible to think of scenarios in which control of labor disputes would be a proper exercise of Presidential powers. Instead, the importance of the case lies in Justice

⁴ Wells, *Oliver Wendell Holmes: A Willing Servant to God*, 156.

⁵ Wells, *Oliver Wendell Holmes: A Willing Servant to God*, 178.

Jackson's delineation of three possible modes of Presidential action and their corresponding burdens of proof. Justice Jackson describes the first situation as being when the President acts in pursuant to an order of Congress. In this case, the President's authority is at maximum. The second situation is that in absence of Congressional grants and denials pertaining to a Presidential action, the President can only act on a case-by-case basis, in a "zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain."⁶ The third scenario is that when the President takes action against Congress, his or her power is at the lowest end, "for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter."⁷ It is important to note that just because the President's power is at its lowest end, the President's action is not necessarily unconstitutional. Rather, the court applies the highest burden of proof to establish constitutionality. These three scenarios tell judges what questions to ask themselves in order to fairly decide cases and maintain consistency in their future decisions.

If this case created a simple if-then statement, 'If the President seizes control over labor disputes, then the act is unconstitutional because it is a violation of the separation of powers,' the courts would actually be incapable of securing justice in the future. Each case's decision is informed by the particular facts of the case, and by the broader background information of the case. For example, the relevant background information pertaining to the *Youngstown* case is the occurrence of the Korean War. The facts or background information of a future case may make a future presidential seizure of control over labor disputes constitutional. Therefore, in recognition of the unpredictability of future situations, and possible divergent facts, the decision of the case includes an outline of a decision making process to be followed by future cases, but does not

⁶ "Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)," Justia Law, accessed August 9, 2021, <https://supreme.justia.com/cases/federal/us/343/579/>.

⁷ "Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)."

explicitly bind future cases to the decision itself. The gap between the substance of a universal law and a particular instance reproduces itself if precedent is treated as substantially important. A gap then exists between a particular instance and previous precedent. The application of the universal phrasing of the Constitution onto a particular situation requires judges to make decisions in good faith. In contrast to legal pragmatism, mechanical decision making accepts procedural legitimacy as the superior goal above substantive justice.

Originalist claims gain legitimacy over other types of constitutional interpretation by appealing to a type of mechanical decision making which looks to the original meaning of a text to fill the gap between a universal law and a particular instance. Originalism is similar to syllogistic decision making because it appeals to the same underlying principle: the law is objectively determined and applied without judicial interference. A valid concern about legal pragmatism is that “judges can do what they want,” creating tyranny within the judicial branch.⁸ Legal pragmatism seems to give the judiciary the ‘will’ that *Federalist 78* warns against. Unrestrained judicial freedom was clearly not intended by the Founders. However, as Wells explains, “although judges are not bound by any particular formulation of the rule, they are bound to apply the rule in this pragmatic sense.”⁹ Under Justice Holmes’s model of interpretation, although judges are not bound in substance, they are bound to a decision making model. And still, it is true that pragmatism trusts judges with quite a bit of wiggle room. Legal pragmatism secures procedural justice in a loose sense, but if perfectly implemented, with moral judges seeking the public good, it secures substantive justice without fail.

In contrast, originalism secures procedural justice and accepts that it may fail to secure substantive justice in some instances. Originalism appeals to the moral principle that the will of

⁸ Wells, *Oliver Wendell Holmes: A Willing Servant to God*, 160.

⁹ Wells, *Oliver Wendell Holmes: A Willing Servant to God*, 161.

the legislature is above the courts, and that the courts are not meant to interpret the law in a way that creates ‘better’ policy. The problem with the claim that originalism achieves unbiased interpretation of the law is that it fails to recognize that the discernment of the original public meaning of a text is subjective, as is the application of the rule to modern circumstances. The judges’ personal beliefs will inevitably influence their interpretations. Scalia argues that because he looks for “‘objectified’ intent - the intent that a reasonable person would gather from the text of the law,” he is immune to deciding that “law means what [he] think[s] it ought to mean.”¹⁰ However, in discerning what the people at the time understood a law to mean, judges are asked to act as historians.¹¹ The original public meaning of a text is often unclear, and in areas of ambiguity, it can be decided that “the original understandings [say] pretty much what the person examining them want[s] them to say.”¹² In practice, originalist methods are still more restrained than a moral reading of the Constitution because there is greater room for disagreement over morality than there is over the original public meaning of a text, and how to apply this understanding to modern circumstances. Nearly anything can be construed to be a type of moral interpretation, but valid applications of the past public meaning of a law and modern circumstances are more constrained.

Dworkin’s moral reading of the Constitution arguably lacks procedural legitimacy but secures substantive justice depending on the morality of the interpreter. Dworkin assumes the law’s purpose is ethical, and believes that a law’s substantive meaning is its underlying moral principle. According to Dworkin, this interpretation is not unrestrained-- precedent, and the general moral trend underlying laws in the society, constrain the interpretation. Some laws, like the Fourteenth Amendment, are so broadly phrased that it is clear they were intended to promulgate a

¹⁰ Antonin Scalia, *A Matter of Interpretation* (Princeton: Princeton University Press, 1997), 17-18.

¹¹ David Strauss, *The Living Constitution* (Oxford: Oxford University Press, 2010), 19.

¹² Strauss, *The Living Constitution*, 21.

general moral principle. Dworkin acknowledges that this method of interpretation is subjective: “judges whose political convictions are conservative will naturally interpret abstract constitutional principles in a conservative way.”¹³ In this mode of interpretation, judges extract a moral principle from a universal law, and apply this to a particular instance. The application onto particularity is constrained by “history and integrity” (precedent), so the decision fits into a general legal trend.¹⁴ Under this mode of interpretation, securing substantive justice is dependent on the moral beliefs of the judges. The main difference between originalist interpretations and legal pragmatism or Dworkin’s moral reading is that originalist interpretations impose no duty rooted in individual judges’ sense of morality, whereas other approaches embrace a moral duty of the judicial branch. Originalism appeals to a broad moral duty independent of each judge’s individual morality: to uphold the people’s will as concretized by the law in a democratic constitutional system. Given the contents of *Federalist 78*, it is clear that unbiased interpreters were desired by the Founders. In this sense, originalism (on its face) seems to best achieve the goal of unbiased interpretation without judicial interference, despite the fact that originalists are still influenced by their own morality when they determine the text’s original meaning and application to modern scenarios. There is subjectivity involved in every instance of closing the gap between universal and particular instances. A moral reading of the Constitution, and pragmatist readings which emphasize the particularity and uniqueness of situations, hold the ideal of substantive justice above pure procedural justice.

Although the legal system’s purpose is to create a formalized and objective system to fairly settle disputes, pure rationality is ineffective in applications of the law because of the diversity of

¹³ Ronald Dworkin, “The Moral Reading of the Constitution,” *The New York Review*, accessed August 9, 2021, <https://www.nybooks.com/articles/1996/03/21/the-moral-reading-of-the-constitution/>.

¹⁴ Dworkin, “The Moral Reading of the Constitution.”

particular instances and the superior goal of the judiciary to secure substantive justice. Precedent is invaluable because it creates a decision making outline, which constrains judges, and allows them to maintain consistency in future decisions. Judges have to recognize when to go beyond strict $1 + 1 = 2$ mathematical logic in order to reach a practical decision that is substantively just. Sometimes, a procedurally just decision, although secure in its formal logic, makes little practical sense. Originalist methods that seek to apply the original meaning of the law to present circumstances are negatively restrained in their formalism. Non-originalist methods of interpretation are not less legitimate because securing justice cannot be formalized completely because of the nature of the act. Aristotle defines *epieikeia* in Book VI of *Nicomachean Ethics*, explaining that *epieikeia* is the exercise of what is reasonable, fair, or equitable. He explains that the law sometimes runs incongruent to the facts at hand, but “the error is not in the law; or in the lawgiver, but in the nature of the case” because “all law is universal, and yet there are some things about which it is not possible to make correct universal pronouncements.”¹⁵ Judges must use *epieikeia* to make equitable decisions to secure justice.

But, once it is decided that substantive justice is superior to procedural justice, the importance of the moral beliefs of each individual judge takes the stage. In contrast, if one commits to the unattainable ideal of the Founders, and ignores that unbiased decision making is impossible, judges can falsely claim that their political ideologies do not influence their decision making under originalism (although as previously discussed, morality does influence their interpretations). The main incongruence between legal interpretive methods stems from the unattainable ideal of an objective interpreter, and the societal practical function of judges to protect the rights of minorities and produce fair and substantively just decisions. Under legal pragmatism and a moral reading of

¹⁵ Aristotle, *Nicomachean Ethics*, trans. Christopher Rowe (Oxford: Oxford University Press, 2002), 174.

the Constitution, it's clear one would want Justices to share one's own moral values. And as explained, one would also want originalist Justices to share one's own moral values because originalism is subjectivity hiding under the guise of unbiased interpretation. Therefore, an ideologically balanced court is important to guard against the fallible morality of likeminded individual Justices. An unbalanced Supreme Court would lead to the dominance of one moral ideology, making it difficult for the Supreme Court to reach fair decisions. The morality of different judges must act as a check on one another. The Supreme Court cannot be trusted to 'get it right' in all instances, and the fallibility of individual judges is comparable to the fallibility of professionals in any other field. Overall, the Supreme Court's interpretations cannot be objective, and so the Supreme Court's jurisdiction should be limited by rules like the political questions doctrine in order to curb its power.

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