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BOOK REVIEW

JUSTICE IN ROBES (2010) by Ronald Dworkin, Universal Law Publishing Co. Pvt. Ltd., G.T. Karnal Road, Delhi – 110033, pp. 1 + 308, Price Rs. 375

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Ronald Myles Dworkin(11 December, 1931 to 14 February, 2013), a celebrated philosopher of law, has contributed illustratively to the legal field by the various books which he has published from time to time. His writings expands from explaining about the sources of law in 'A Matter Principle' (1985), a full-dress theory of law in Law's Empire (1986) to his persuasion to find common ground on abortion between pro-life and pro-choice forces in a common respect for human life [Life's Dominion(1993)] and he wrestled with alterative views of equality in Sovereign Virtue (2000) and returned full-circle to a lifelong fascination with judges and the nature of adjucation in Justice in Robes (2006).

If one can dare to summarise so rich and lucid a lifetime's argument, Dworkin, in Justice in Robes, rejected both the traditional view, that judges must conform to established authority, and the belief of the American liberals, that judges should seek to improve society, with a new emphasis on the judge's responsibility to uphold individual and collective morality. Dworkin was always aware that law in particular adjudication were, as he has put it, " a branch of morality". Dworkin's big idea was to put human dignity at the centre of his moral system, for judges and for others. He wrote, " if we manage to lead a good life, we make our lives tiny diamonds in the cosmic sands".

Justice in Robes is a compilation of essays where Dworkin through his legal arguments, subtly presented applications to specific problems of a classic liberal philosophy which, in turn, was grounded in his belief that law must take its authority from what ordinary people would recognise as moral virtue, in a way that are accessible to lay readers. The essays in the book pose the thematic question " How should a judge's moral convictions bear on his judgements about what the law is?" Lawyers, sociologists, philosophers of law, politicians, and judges all have answers to that question: these range from "nothing" to "everything". Dworkin, in his own way, has tried to justify his answers and defended his views, in this book. He argues that the question is more complex than it has often been taken to be and charts a variety of dimensions – semantic, jurisprudential and doctrinal - in which law and morals are undoubtedly interwoven. It is this blind faith in words that has pushed Dworkin to the court & Natural Law Philosophers and therefore,

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has been criticised indiscriminately. It is true that most philosophers of law reject natural law theory, but, John Finnis and Michael Moore, each having embraced natural law theory did not have to face the kind of resistance as of Dworkin. The problem may be that Dworkin has made it far too easy for other philosophers to dismiss him, because he stubbornly refuse to back down from some bad arguments. The best example is Dworkin's " semantic sting" argument against H.L.A Hart, first presented in Law's Empire. Sadly enough, Dworkin sticks to this stubbornness in Justice in Robes also.

Downkin restates and summarises his own widely discussed account of the connections between law and morals, which emphasises the sovereign importance of moral principle in legal and constitutional interpretation, and then revives and criticises the most influential and rival theories of his own. He argues that pragmatism is as empty as a theory of law, that value pluralises misunderstands the nature of moral concepts, that constitutional originalism reflects an impoverished view of the role of a constitution in a democratic society, and that contemporary legal positivism is based on mistaken semantic theory and an erroneous account of the nature of authority.

On reading the essays in Justice in Robes, we can find two theories of laws being discussed: Hart's conventionalist theory of law and Dworkin's non-conventionalist. In his; semantic sting', Dworkin argues, Hart was committed to a conventionalist theory of law, in which the law of a jurisdiction is determined by agreement. Dworkin takes the semantic foundations of Hart's theory of law as a reason for rejecting it. Because semantic conventionalism is inadequate, so is Hart's theory of law.

While the conventionalist theory of law looks to the currently accepted views of a group in a jurisdiction the find the criteria identifying the laws of that jurisdiction, while under a non-conventionalist theory of law these criteria can diverge from the currently accepted views of any groups in the relevant jurisdiction. An extreme of a non-conventionalist theory of law would simply use the same set of criteria for identifying the laws of all jurisdictions. In explaining his conventionalist theory of law, Dworkin, in Justice in Robes, asks us to consider an imaginary case in which the plaintiff, Mrs. Sorenson, has suffered harm from a generic drug. She cannot prove which company manufactured the pills that caused her harm. Does the law of her jurisdiction entitle her to damages from each of the manufacturers on the basis of its market share, given that in past cases "judges stated that no one is liable for injuries he did not cause" and there are "no past decisions in which the judge awarded anyone damages based on market share rather than depict caution?"

Dworkin offers the following account of how the matter would be decided according to his theory of law and according to Hart's:-

"In my view, legal argument is characteristically and pervasively moral argument. Lawyers must decide which of competing sets of principles provide the best-

morally most compelling - justification of legal practice as a whole. According to Hart's [theory], on the other hand, substantive legal argument is normative only when social sources make moral standards part of the law. No legislature or past judicial decision has made morality pertinent in Mrs. Soreson's case so, on Hart's view, no moral judgment or deliberation enters into the question whether she is legally entitled to what she asked. So far as the law is concerned, he would have said, she must lose.

Therefore, according to Hart's theory, morality is relevant to Sorenson's case only if officials agree that it is. For Dworkin, in contrast, the law concerning Sorenson's case is always answered " by asking whether the best justification of negligence law as a whole contains a moral principle that would require that result in her circumstances." Mora considerations are always relevant, even if officials in the jurisdiction disagree on this matter, and so it is always possible that the law is on Sorenson's side.

In justice in Robes, Dworkin explains the emergence of the concept of law in four stages :- the Semantic stage, the Jurisprudential stage, the Doctrinal stage and the Adjudicative stage..

In the Semantic stage, the question which has been sought to be answered is what kind of a concept the doctrinal concept is and what assumptions and practices must people share to make it sensible to say that they share the doctrinal concept so that they can intelligibly agree and disagree about its application in assuring this question, the author made the following distinctions:-

1. Criterial concepts: - People share same concept only when they agree on a definition – rough or precise- that sets out the criterial for the correct application of the associated there or phrase.
2. Natural Kind Concepts: - People share some concepts whose instances have a natural physical or biological structure – metals and animals, for example - even though they do not agree about the essential nature of the examples or in the criteria they use to identify those examples.
3. Interpretive concepts:- Some of our concepts function differently still: they function as interpretive concept that encourage us to reflect on and contest what some practice we have constructed requires. In Chapter 6 of this book, the author has explained that the central concepts of political and personal morality- the concepts of justice, liberty, equality, democracy, right, wrong, cruelty and insensibility - function for us as interpretive concepts as well.

The next steps of legal theory is the jurisprudential stage, as explained by the author, where a theorist must construct the kind of theory of law that is appropriate after the questions in the semantic stage has been assured. At this stage,

reflections on the doctrinal and the aspirational concepts come together – which other values best explain the rule of law as a political ideal.

In the Doctrinal stage, an account of the truth conditions of propositions of law in the light of the values identified at the jurisprudential stage is constructed. The author suggests that a proposition of law in true if it flows from principles of personal and political morality that provide the best interpretation of the other propositions of law generally treated as true in contemporary legal practice.

At the adjudicative stage, the question which arises is that what political officials who are generally expected to enforce the law should actually do in particular cases. Of course, that is a political question and therefore a moral question. It is not a question about when, if ever, morality requires judges to act independently of or even contrary to law.

This anatomy of legal theory is both radical in the history of legal thought and of very great importance in contemporary legal practice. This has taken different forms and attracted different names which have been termed as "legal pragmatism" by the author. In India, this is judicial activism. According to pragmatism, judges must on the whole obey the legislature and keep faith with past judicial decisions because the power of legislative and judicial institutions to coordinate future behaviour is of great benefit in securing efficiency or any other goal, and that power would be undermined if judges characteristically ignored past declarations in new decisions.

The most influential legal pragmatist who takes this view has been Richard Posner, who is both a prominent federal judge and a prolific legal scholar and writer. The author critically argues the legal pragmatism of Posner in chapters 2 and 3 where he attempts to deploy his pragmatist theories to justify the Supreme Court's egregious decision in *Bush vs. Gore* that made George W. Bush president and fatefully changed the world's history.[1] Dworkin agues throughout his discussion of Posner's theory that his form of pragmatism comes to nothing, that is empty, because he insists that judges should decide what the best consequences are.

Similarly, the author has, in the course of this critical study discussed the works of other influential lawyers and philosophers of the era like Isaiah Berlin, Cass Sunstein, Antonin Scalia and Joseph Raz. Isaiah Berlin is one of the most important champions of fundamental conflict in political values and his deep conflict in moral values challenges the ideal of integrity at a very basic level. Dworkin explicated and criticised, in turn, Berlin's claims and arguments in Ch-4.

Dworkin criticises himself and confesses that he has provoked unnecessary controversies in his attempt to characterise the jurisprudential doctrine of legal

[1] Richard Posner, Ed. Ronald Dworkin, "Bush v. Gore as Pragmatic Adjudication," in A Badly Flawed Election: Debating Bush v. Gore, the Supreme Court, and American Democracy (New York, New Press, 2002)

positivism. When he says "nothing of any importance turns on how that name is used or, indeed, on which writers are called positivists". However, the distinctions of jurisprudential positions made by him, as a matter of exposition are helpful. He has tried to distinguish between Doctrinal positivism, sociological and taxonomic positivism. The essays in 'Justice in Robes' about positivism have taken doctrinal positivism as their target and unqualified references to positivism in this book should be understood as referring to that position.

It is evident that much of 'Justice in Robes' is devoted to criticising aspects of Hart's philosophical method. Dworkin claims that the confusion in Hart's philosophy of law has resulted from failure to distinguish the doctrinal from other concepts of law. Dworkin also rejects Hart's archimedianism – that is, Hart's belief that the analysis of the concept of law is an activity divorced from the more concrete efforts of lawyers and judges to determine what is legal and illegal. However, the author nevertheless agrees with Hart that a general theory of law can be arrived at by revealing the content of this concept of law.

Finally, Dworkin ends by suggesting not to treat law as a separate department from morality and offering a new "intellectual topography".

Critically talking, in 'Justice in Robes', Dworkin has criticised Hart for being 'semantic'; however, Dworkin's theories of law can be understood as no less semantic which Green has suggested as being more 'meta-semantic' than the former. 'Meta-semantic' is used in a different sense from the word 'semantic' which refers not to claims about what the content of a concept (or the meaning of a word) is, but rather to claims about how this content or meaning is generated.

Dworkin's argument has been criticised to be a fallacy, for, as many philosophers of law have argued, conventionalist theories of law do not flow from meta-semantic views. This is also because, the meta-semantic fact that the content of the concept of law has yet to tell us what these criteria are and therefore, cannot yield any particular theory.

A thorough reading of 'Justice in Robes' will encourage the readers to see jurisprudential questions about when, how far, and for what reasons authoritative, collective decisions and specialised conventions should have the last word in our lives. No one would any longer doubt that justice plays a role in fixing what the law is. This collection of essays and original chapters by Dworkin is a model of lucid, logical and impassioned reasoning that will advance the crucially important debate about the roles of justice and morality in law.