**Lect 16**

Dworkin’s second argument against Hart – theoretical disagreements

* Tennessee Valley Authority v. Hill
* question was absurd consequences of statute
* According to Burger, the plain meaning of the text should control even when absurdities follow unless compelling evidence can be found to show that Congress did not intend the absurd result.
* Powell, on the other hand, argued that plain meaning should not control when absurdities follow unless compelling evidence can be found that Congress did intend the absurd result.
* can we explain this as agreement about content of rule of recognition but disagreement about application?
* hard – it seems to be a disagreement about the content of the rule of recognition
* but the participants in the dispute seem to think that there is a pre-existing right answer

Dw’s theory of law as a response to this problem

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- moral judgment has to be exercised even to apply rule of recognition

- how does morality fit into law?

Start with the idea of constructive interpretation

* eg of literature
* not just finding out what person intended
* Seeing it as the best that it can be
* But this does not mean simply replacing the work with something better
* Interpretation is limited by what the work interpreted actually is
* But it also is a normative approach to that thing

stages of interpretation

* In the pre-interpretive stage you identify what is in fact given
* You then identify the underlying purpose or meaning of what is given
* And then reform in the light of this underlying purpose and meaning

There can be skepticism about whether there is anything real that you are aiming at in constructive interpretation

Dworkin draws a distinction between:

Internal skepticism, that arises in the context of a commitment to interpretation

And external skepticism

The external skeptic stands above the body of interpretive beliefs and questions whether there’s any metaphysical connection between those beliefs and some reality

Dworkin denies that external skepticism is possible

The distinction between internal and external skepticism is also possible concerning morality

The internal skeptic questions whether morality is real in the context of his own commitment to morality-moral commands seem incoherent and conflicting

The external skeptic about morality demands a connection between the totality of our moral beliefs and commitments, on the one hand, and some external reality, on the other

Dworkin rejects external skepticism concerning morality

This means accepting, in effect, a form of moral realism

Morality is real, because there is no place in which we can stand to deny its existence in the way that the external skeptic does

Dworkin claims law is an interpretive concept

1. Interpretive Method
   1. Legal reasoning is constructive interpretation involving best justification of our legal practices as a whole
2. Three stages
   1. Pre-interpretive – one starts with those things that count as law as a matter of social fact
   2. One then attempts to identify the underlying purpose or meaning of those legal materials
   3. And then reforms the practice in the light of that underlying purpose are meaning

This is analogous to the way that judges reason and common law and constitutional cases

Interpretation identifies preexisting law - law that was always there are binding us but that we were not aware of

This can explain why, say, the Supreme Court thought that Brown v Board Of Education articulated preexisting law rather than made new law

Segregated education was always unconstitutional, even when that had not yet been recognized by officials

Is this natural law theory?

Interpretation identifies legal norms that can diverge from morality. This is because interpretation is constrained by existing legal materials.

Notice the connection between Dworkin theory of law in his theory of political obligation. Legal norms are tied to associative obligations which are special obligations that we have independently of our more general moral obligations.

Associative obligations explains our duty to obey the law.