



# **Interpretation, Practices and Values**

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# Structure

- 1. Dworkin's methodology of legal philosophy
- 2. Dworkin's substantive views of what is law

What might be the virtue of legal positivism, methodologically speaking?



# **A Couple of Conceptual Distinctions**

- propositions of law and grounds of law
- Empirical Disagreements and Theoretical Disagreements about law

# Revisiting *Riggs v. Palmer*



# Where does positivism go wrong?

- Legal practice, unlike many other social phenomena, is *argumentative*.
- two perspectives of *studying* legal practice: sociological, participatory

## **“The Semantic Sting”**

- legal positivism as a semantic theory of law: A semantic theory supposes that lawyers and judges use mainly the same *criteria* in deciding when propositions of law are true or false.

# What's Wrong with A Criterial Concept?

- Criterial concepts;  
natural kind concepts;  
interpretative concepts
- Only interpretative concepts can  
manifest theoretical disagreements.

# Dworkin: Normative Jurisprudence

- Dworkin: all political (legal) concepts are interpretive concepts. In order to understand the concept of law and legal practice, we have to engage in normative judgment of the value of the practice.
- Descriptive jurisprudence is impossible. Legal positivism as a descriptive jurisprudence is an Archimedean jurisprudence. (i.e., An imaginary Mrs. Sorenson's case)

## 2. Dworkin's substantive view of what is law: law as integrity



*LE*: “General theories of law are constructive interpretations: they try to show legal practice as a whole in its **best light**, to achieve equilibrium between legal practice as they find it and the best justification of that practice. So no firm line divides jurisprudence from adjudication or any other aspect of legal practice... any judge’s opinion is itself a piece of legal philosophy, even when the philosophy is hidden and the visible argument is dominated by citation and lists of facts. Jurisprudence is the general part of adjudication, silent prologue to any decision at law.” p. 90

# How to reach what is law

- For legal positivism:  
identification.
- For Dworkin:  
interpretation: fit and  
justification

# Law as integrity

- legal practice=judicial decision (as facts) + political morality
- integrity: treat like cases alike
- integrity= coherence= unity

# Dworkin on Law and Morality

- Law is part of political morality.
- Law  $\in$  political morality  $\in$  morality  $\in$  ethics

# **summary**

- Law and morality are not independent from each other.
- What do we understand of the concept of law shall be interpreted from its best justification of underlying political values.
- Legal theory is theory about political values.