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LA INTERPRETACION DEL DERECHO Y EL PENSAMIENTO HERMENEUTICO

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Es de toda evidencia que la interpretación ha sido una preocupación universal y permanente del hombre, ubíquesela ya en el plano científico, ya en el plano religioso o en el de la magia, etc., y trátese del mundo oriental (Tao, Dharma, Quran) como del occidental (Torah, Evangelios, Códigos). Por su puesto que la observación vale también -como queda insinuado- para el derecho, ya desde que éste aún no aparece diferenciado de la moral, de la religión o de la magia, o -mejor dicho- ya desde que el derecho aparece como algo humano y más que humano, a la vez. De cualquier modo, la interpretación ha preocupado al derecho antes y después del referido *clivage*; en Occidente, desde los romanos, pasando por la Edad Media, hasta llegar a la Hermenéutica moderna y el llamado pensamiento "postmoderno". A este último respecto, importa agregar que, hoy día, la hermenéutica ha llegado a ser nuestra *koiné* o *lingua franca*, según la expresión al parecer ya consagrada, al menos desde el momento que los *mass media* trabajan con expresiones y/o conceptos como los de que "lectura igual interpretación" e "interpretación igual conocimiento", o poco más o menos.

Ahora bien, tratándose de la interpretación del derecho, cabe advertir que nunca hubo mucho interés en desarrollar una Hermenéutica o Teoría general propia, genuina o prístina, a pesar de que se estaba consciente de la soberana importancia de esta materia. Por el contrario, la hermenéutica jurídica, al parecer, siempre se ha vivido más que pensado; quiero decir, pensado a fondo y desde la raíz misma del derecho, y sin desconocer la labor ímproba - pero casi solitaria de un Savigny. Digámoslo claramente: De un Savigny que, a no cambiar las cosas, seguirá imperando en el siglo XXI como lo hizo ya desde el siglo XIX, desde luego, con las debidas *addenda et corrigenda*.

En efecto, así como, originariamente, la hermenéutica abarcó tanto los aspectos religiosos como estrictamente jurídicos, así también, modernamente, la Hermenéutica general y, en especial, la jurídica, nacieron ligadas vitalmente a la religión (con Schleiermacher), para después irse laicizando (a partir de Dilthey) hasta llegar a volverse enteramente ateas, en el llamado pensamiento postmoderno. Este último, pese a todos los justos reproches que pudieren hacérsele, ha conseguido elaborar un cierto número de principios que, en conjunto, permiten construir una Hermenéutica general o Teoría General de la Interpretación de un valor científico innegable, de la semiología, la tópica y la filología modernas, por nombrar sólo algunas de estas

ciencias. Obviamente, la hermenéutica jurídica podría aprovechar esa Hermenéutica o Teoría general de la interpretación para un *aggiornamento* que -pongamos por caso- supere esas aporía que un Kelsen le echa en cara a la actual Teoría de la Interpretación jurídica. Es lo que, en su dominio ha hecho ya la Hermenéutica bíblica, especialmente la evangélica o protestante, pero también la católica, con el propio Cardenal Ratzinger a la cabeza, que citan a Gadamer, a Ricoeur y al propio Heidegger.

Pero es del caso que, al parecer, el pensamiento hermenéutico actual no ha logrado interesar mayormente a nuestra *intelligentsia*; incluso, a veces se tiene la impresión de que no la conociera bien a fondo. No fue esta la actitud de Savigny cuando, hace un siglo y medio, fundó la moderna hermenéutica jurídica; por el contrario, el ilustre jurista trabajó en estrecho contacto con un selecto grupo de pensadores, como los Brentano, los hermanos Grimm y el mismo Schleiermacher. Tengo entendido, además, que, en alguna oportunidad, Savigny habría lamentado el hecho de no haber tenido la oportunidad de profundizar en materia de Lógica.

De modo que, si no estoy muy mal informado, me veo obligado a reconocer que el pensamiento hermenéutico actual sólo ha logrado interesar a pocos de nosotros. Tal es así que la excepción viene inmediato a la mente: Ronald Dworkin, nombre que aparece casi como paradigmático a este respecto. Ahora, si esto es así -y no creo andar muy descaminado- convendría revisar un poco el punto de vista de este jurista para detectar algunos de los logros o aciertos de la hermenéutica actual susceptibles de aprovecharlos en la interpretación del derecho. Es lo que me propongo hacer, aunque muy suscintamente, basándome especialmente en la que yo creo su obra fundamental -"The Empire of Law"-. Como el profesor Dworkin me ha agradecido personalmente el "careful study of this book", quisiera, a mi vez, agradecerle sus expresiones siendo particularmente cuidadoso al exponer aquí su pensamiento. No me referiré, por lo tanto, a otras obras ni a otros aspectos de la obra de este distinguido jurista, hoy día profesor en Oxford como ayer lo fuera de Harvard.

Todos vivimos bajo el Imperio de la Ley, y ésta exige su cumplimiento -dice el Prof. Dworkin, y en seguida agrega que para realizar tal cosa es necesario, primero, conocer la ley, y esto requiere, a su vez, interpretarla, especialmente si se trata de un texto. Pero -continúa- si el derecho implica interpretación, necesitamos de una teoría de la interpretación para el Derecho y en el Derecho. El derecho es una actividad interpretativa, y el intérprete -juez o no- debe basar su interpretación, quiéralo o no, en algún método, estrategia o algo parecido. Además es obvio que quien elige es el mismo intérprete, que, al elegir tal o cual sistema o metodología, se compromete personalmente a sí mismo. De hecho -concluye el jurista- toda sentencia viene a ser una especie de ensayo filosófico. En la praxis, esto se traduce en la exigencia de tener que dar con la mejor interpretación posible, lo que, tratándose del tribunal, apuntará a la mejor sentencia posible, *hic et nunc*.

La mejor interpretación proviene de considerar el derecho como integridad, y obliga a interpretarlo como de un solo autor, que es la comunidad o sociedad. El derecho hay que enfocarlo como un sistema coherente y cerrado que se impone al intérprete; es decir, como un solo texto que, por definición, hay que considerar como completo. Este texto o canon es una subespecie del proceso interpretativo que capta y transmite un sentido.

La lectura del texto *produce* su sentido en el diálogo entre propósito (valorado) y canon textual, de modo que el intérprete se introduce así (por esta vía) en la cadena que -por decirlo así- implica el proceso jurídico, y es este encadenamiento el que

facilita el *fair play* entre la coerción del pasado y la libertad del presente, de cara a la ley. El derecho apunta así a una futura totalización que, aunque postergada indefinidamente, ofrece cada vez el último capítulo. La interpretación del derecho le da a éste su sentido, de modo que el derecho es tal después de interpretado o, más directamente aun, el derecho es su interpretación.

La historia y la praxis jurídica condicionan las posibilidades del derecho, el que se presenta como una sola y única historia, de la cual todos y cada uno de sus momentos (legislación, jurisdicción, etc.) son sólo capítulos. La personificación de la sociedad política (o *body politics*) se hace necesaria si hay que entender el derecho como un encadenamiento de actos jurídicos coherentes y sistemados. La personificación de la sociedad política en la jurisdicción sería un juez omnisciente y omnipotente: un Hércules, como lo llama el jurista. Los tribunales son las capitales del Imperio de la ley, y los jueces son sus príncipes; pero no son sus *seers* ni sus profetas; porque, si bien los jueces dicen la última palabra, "la última palabra" no significa "la mejor palabra", desde el momento que "último" y "mejor" no son sinónimos. Incumbe al filósofo trabajar en formas más pura de derecho, cosa que lleva la problemática a terrenos como la moral y la política; pero, así y todo, las consideraciones del filósofo le serán útiles al juez, al recordarle que hay, también, "una ley más allá de la ley". Por lo demás -ya lo hemos visto antes-, en todo jurista hay un filósofo en el sentido de que- sépalo o no, quiéralo o no - todo jurista tiene su propia idea del derecho, de modo que - repitámoslo - "toda sentencia es, de hecho, una especie de ensayo filosófico".

Hasta aquí la breve síntesis de un enfoque que presento como evidencia de que puede hacerse buen uso del pensamiento hermenéutico actual a los fines de renovar nuestra Teoría de la interpretación, advirtiendo que -a mi juicio- aun podría sacársele mejor provecho, especialmente si se desarrollan cuestiones que el *approach* del Prof. Dworkin no considera, como -por ejemplo- la importancia de la eiségesis y la dialéctica entre ésta y la exégesis.

Por otra parte -y con esto termino- tal vez mi síntesis haya sido demasiado apretada; pero, con todo, quizá haya logrado interesar en el estudio del pensamiento dworkiano a quienes aún no lo conocían, o lo conocían poco, como podría ser perfectamente el caso de los ayudantes-alumnos asistentes. Para estos eventuales interesados tengo a su disposición una síntesis un poco más amplia, que acompaño a la presente ponencia.

ANEXO

a la Ponencia del profesor *ISMAEL BUSTOS* (Universidad Central) titulada

"LA INTERPRETACION DEL DERECHO Y EL PENSAMIENTO HERMENEUTICO".

"A NEW APPROACH TO CONSTITUTIONAL JUSTICE: PROF. DWORKIN'S". Or an interpretative analysis about an interpretive approach.

By *Ismael Bustos*

Law means enforcement: we all live under "Law's Empire". But, to carry it out, law must be known first. Knowledge in its turn requires interpretation, especially when dealing with a text, whose terms and concepts must be known in this same order.

So, law implies interpretation; but, if we approve this, we must concede that a theory of interpretation is both prior to and necessary *for* Jurisprudence and *in* Jurisprudence.

Let us say it clearly: If we want a legal theory of interpretation, we must have a proper theory of interpretation before. Legal reasoning is an exercise in interpretation; then, ours too.[1] Moreover, as Prof. Dworkin asserts that his approach is an interpretive one, so ours, or - to say better - this essay is an interpretive analysis on Prof. Dworkin's interpretive approach of law.

Judge or not, the interpreter must construct his or her interpretation, held on law - we can agree willingly - but by means of some method, strategy or the like. And who selects these is just the interpreter, that is to say, a person with its own peculiarities, abilities, and disabilities, vitues and weaknesses, and so on.[2]

JURISPRUDENCE REVISITED

If law is an interpretive concept, each interpreter - say, the judge - grounds his judgement about "the point" on legal practice as a whole, which involves principles, habits, conventions, etc.[3] This whole points to some especial theory of law and, as a consequence, to Jurisprudence itself. Then, between the latter and adjudication there is not a long way. In fact, any sentence is a kind of philosophical essay.

The most important point of legal practice is to control power, and this is the core of what we call "the rule of law." So, "taking rights seriously" becomes "a matter of principle", and a matter of ethics too, in addition to its conection to politics, as we are just saying.

LAW AND POLITICS

Whether Jurisprudence realizes it or not, law is closely tied to politics: for instance, providing a justification, in principle, for official coercion.[4] Moreover, past politics

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1 Ronald DWORKIN, *Law's Empire* (London: Fontana Press, 1990), p. vii.

2 Ibid., pp. 87-88.

3 Ibid., pp. 110-111. "All of us, but specially lawyers, develop attitudes toward law along with the rest of our general social knowledge, unself-consciously and as we go along, before we examine these jurisprudentially, if we ever do".

4 Ibid., pp.109-110.

(law) becomes the rule of rights (sentence), for adjudication must be - somehow - consistent with legislation.

Against the great classics and their alleged "state of nature", real people live inside a political society or body politic, which also involves a society of principle and a body of principles, as fairness, justice or even due proccess. We could add another one: the virtue of political integrity, i. e. to treat like cases alike. On this matter, we demand the body politic or the state to act on a single and coherent set of principles. Thus, law become the aftermath of integrity, with its two especial branches, concerning legislation and adjudication. The latter asks the judge to see law as a whole and to enforce it in a coherent way.

Political integrity assumes a special personification of the state and the whole community, and attributes them their own responsability, which finally falla upon officials and citizens. So, concerning civil rights, both the community and the state have a duty in order to protect them, shame and outrage beeing the respective reward for our collective guilt involved in the case.[5]

A SOCIETY OF PRINCIPLE

Defended by neighborhood or fraternity, integrity gives rise to a special form of political society and becomes the vehicle for its organic change, the reason beeing that such a society accepts not only past political rules, but whatever other standards that flow from the principles under which it lives, considered as required in new circumstances[6].

Integrity fuses moral and politics and conects law with the justification of public coercion. Likewise, its model of society admits that their political rights depend on a scheme of principles. Moreover, the members of such a society accepts rights flowing from that scheme even though these have never been formally expressed.[7] All of it points to a crucial question: the law must be taken and interpreted in an overall principled way. Integrity requires that judges treat law as a coherent set of principles and draw out the implicit standards now hidden underneath the explicit ones.[8] Integrity will provide the judge enough imagination and courage to act properly in any case.

THE LABOR OF HERCULES

Legal practics means an unfolding political narrative, and legal rights were created by a single author, that is, the community personified. Propositions of law are true if they are in accordance with the principles of justice, fairness and procedural due process that provide the best interpretation of legal practice.[9]

Any interpretation has two dimentions. The first one is the dimentions of fit, i. e. conformed to standars; the second dimention of interpretetion requires the judge to choose the best of eligible readings in order to make the work better and better in a continuing process. Judges must consider their sentences as part of a single story to be continued through a serial interpretation. Considering the special abilities, virtues

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5 Ibid., pp. 167-175.

6 Ibid., pp. 188-189, 211, 214-215.

7 Ibid., pp. 188-191, 211.

8 Ibid., pp. 211, 217, 225.

9 Ibid., pp. 225, 239.

and perfections a judge should have as to follow integrity word for word, Hercules would be the right name to call him.[9] As an imaginary being, it becomes useful too, specially when analysing the so called "hard cases".

In common law cases, as in cases turning on statutes or the Constitution, judges detect some situations as "hard cases". Specially about constitutional questions, judges try to find the best constructive interpretation attending to the political system and legal doctrine of their community.[10] As judges, must then make a choice; their moral and political convictions are directly engaged, perhaps unwilling or unthinkingly, but certainly.[11]

When serious constitutional rights are in question, the respect of majority opinion raises a real hard case for judges. Now they must combine their conception of law and political morality in order to decide the case. Choosing one interpretation over another involves finally a political choice, which is "a matter of principle", too.[12]

The popular view that there are no uniquely right answers in hard cases must be rejedted. Though law is not consistent in principle overall and there are also some contradictions, some set of principles can be found as to permit an eligible interpretation.[13] Concerning legislation, Hercules looks for a set of principles that can transform the chain of laws into a vision of government as speaking with one voice.[14]

Some scheme of moral responsability the community might be deemed to haye in the only way to justify the interpreted legal practice.[15] But justifying is a matter of academic or/and practical elaboration, both of them belonging to moral theory, and this is something all in all academic.[16] Legal rights coming from legislation include not only those explicit but also the implicit ones. Hercules knows how to read statutes; so he treats legislature as an early author in the chain of law, of which the last link is himself, the interpreter.

READING THE STATUTES

As a matter of principle, statutes should be read on what the men in Congress said,[17] but their reading will also depend on what Hercules interprets in order to apply them *hic et nunc*, and certaily no one can rely his own judgement except on what he himself believes. From the standpoint of Logics, this is valid too when interpreting law as the will or the mind of men in Congress. A statute owes its existance to the decision of other people than the legislators, so that law is a piece of social history, and the set of statutes must be read accordingly.[18] Interpretation of statutes involves integrity as a combination of fairness, justice and procedural due process, consistency with other legislation, and a due balance between principles and policies.

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10 Ibid., pp. 255-258.
11 Ibid., pp. 256-257.
12 Ibid., p. 258.
13 Ibid., p. 268.
14 Ibid., p. 273.
15 Ibid., p. 285.
16 Ibid., pp. 285-286.
17 Ibid., pp. 313-314.
18 Ibid., pp. 314, 318.

A community of principle see legislation not as a bare text containing a certain number of agreements, but as flowing from the community's political morality, this one being its compromise. The text of the statute is an act of the state and, as such, is not a part of the statute itself; so Hercules interprets not just the statute' text, but its life, his interpretation (and its interpretation) changing as long as the statute go on living.[19]

Certainly, it would be an anachronism to stand on former views in order to ignore later changes.[20] On this matter, it is clear that the legislators represent the community's opinion this day and age, but it is clear too that opinions change along the time, especially in our times. So Hercules interprets history in motion, which requires not to amend out-of-date statutes, but to recognize what the former statutes have since become.[21]

Finally, concerning clear- or unclearness of law, it is easy to see that both of them are the "result" rather the occasion of interpretation, says Hercules.[22] Though he could have said that without the "rather", because it is evident that only a previous interpretation of the text can say if this is clear or unclear. Obviously, a second and subsequent interpretation becomes necessary once the text is declared unclear. The overall conclusion is that the distinction between hard and easy cases is ... a pseudo-problem![23]

THE CONSTITUTION

Judges cannot disagree about which words make up the Constitution as a matter of preinterpretive text; they disagree about what the Constitution is as a matter of post-tinterpretive law.[24] Like wise, judges cannot be divided between those who obey the Constitution and who do not; this distinction ignores the philosophical character of law as interpretative, according which every judge is an interpretivist in as much as he tries to impose the better interpretation.[25]

Justice, fairness and majority rule. are different political virtues, and judges have their own ideological and personal interest in the outcome of cases, but we cannot think them less competent political theorist than Congress men, especially considering judges academic background.[26]

Fairness in the constitutional context requires an interpretation relying on principles that hold on national culture, not on fleeting opinions but on lasting features of people's political temperament.[27] So an interpretive judgement does engage political morality in a complex way - say a variety of political virtues.

In short, a brief review of the theory of Constitution brings to an end to both historicism and passivism as general interpretations of constitutional practice.

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19 Ibid., pp. 345-346, 348.

20 Ibid., p. 349.

21 Ibid., pp. 349-350, 364-365.

22 Ibid., p. 352.

23 Ibid., p. 354.

24 Ibid., p. 360.

25 Ibid., p. 360. "The great debates of constitutional method are debates within interpretation, not about its relevance".

26 Ibid., p. 375.

27 Ibid., p. 377.

A UNIQUE STATUTE

The Constitution, being a kind of statute, is also a very special one, so Hercules will work out a very special theory of constitutional adjudication.[28] Thus, interpretation must fit and justify the people's political system, which is impossible without some reference to philosophical ideas, be them implicit or explicit ones. No wonder, considerinf that lawyers are always philosophers...[29] In this respect, the philosophy of individual constitutional rights asserts their importance professing that they are rights against the state. This issue requires to distinguish matters of policy, concerning the general interest, and matters of principle, concerning individual rights, these being trumps over policies, "taking rights seriously".[30]

The Constitution does not contract itself to its substantive part, aspect or moment; so, any plausible interpretation must speak to remedy as well to substance. Therefore, Hercules' decision about remedy is also a decision of law, about the secondary rights people have in order to enforce their primary substantive rights. Thus, the point of constitutional adjudication is to secure rights in the interest of those whose rights they are, and not to try to accomodate the interests of people who want to subvert those rights.[31]

In order to read the Constitution in its best light, Hercules' arguments embraces popular convictions and national traditions and - last but not least - his own convictions about justice and fairness in their reciprocal relations.[32] He becomes aware that other provisions in the Constitution includes the protection of individuals and minorities, or that there are cases in which the issue in play is primarily one of policy rather than principle, i. e. when the argument is about the overall collective interest.[33]

On the whole, then, Hercules escapes the standard academic classification of justices, while he does not think that the Constitution is only what abstract or theoretical thought teaches; instead, he believes that Constitution consist in the best ayailable interpretation of text and practice as a whole, which interpretation is also quite sensitive to the complexity of political virtues bearing on that issue. When he arrives to declare some statute unconstitutional, he does this through a most conscious jud-

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28 Ibid., p. 380.

29 Ibid., p. 380. "Lawyers are always philosophers because jurisprudence is part of any lawyer's account of what the law is, even when the jurisprudence is undistinguished and mechanical". See supra "Jurisprudence revisited".

30 Ibid., p. 381. Likewise, a distinction must be made between - say- speculative and practical knowledge: "He (Hercules) will distinguish between the academic and the practical elaboration of each theory; he will ask not only how attractive each theory is in the abstract, (...) but how well each one could be put into practice (...) as a constitutional standard courts could use affectively in deciding what legislation it disqualifies". Ibid., p. 385.

31 Ibid., pp. 390-391. In short, Hercules' argument implies a number of steps like these: The question of principle is the question of what the Constitution requires as a metter of law; the point of constitutional adjudication is not merely to name rights but secure them; he aims to develop an overall theory of enforcement that does not contradict through procedures what the document demands in substance; the Court's strategies of decree must search out the most effective and immediate enforcement of substantive constitutional rights.

32 Ibid., p. 398.

33 Ibid., p. 398.

gement about what democracy really is and what the Constitution - its guardian - really means.[34]

Probably we desagree with Hercules' judgement; all in all, he prefered to risk defeat; otherwise - Hercules think - he would look alike a traitor not a hero of judicial restraint.

LAW BEYOND LAW

"Law works itself pure" is a well known dictum that does have a place within law as integrity, and accepts considering law at two moments through which it improves in its way.[35] Law is a matter of rights tenable in Court and, therefore, it ties on adjudication, the adjudication principle of integrity being the sovereign law over law.[36]

The body politic is - or must be - a community ruled by a single and coherent vision of justice, fairness and procedural due process, the latter drawing its importance from the fact that it is a matter of rihgt procedures for enforcing rules.[37] In this moment two aspects of integrity must be considered as follows: *Inclusive* integrity, requiring the judge to take account of all the component virtues: fairness, justice and procedural process; and *pure* integrity, which invites the judge to consider what the law would be if judges were free to persue coherence in the sole principle of justice.[38]

As a community of principle, the body politic points to a special role for justice, being this a matter of what the community looks for at all.[39] This is the source of a special form of integrity, whose meaning folows thus: The judge must enforce the law we have, but this present law contains another law, i. e. a purer law defined by pure integrity.[40] It consist in the principle of justice abstracting from all the constraints that inclusive integrity requires. This purified interpretation declares how the community's practices must be reformed to serve a vision of social justice.[41]

Groping towards pure law, will present law be successful o not? Or, to say it in other words, does law really works itself pure, as optimistic lawyers think? That depends on energy, imagination and foresight, since each attitude, if popular enough, contributes to its own vindication.

JURISPRUDENCE AND ADJUDICATION

The Courts are the capitals of law's empire and judges are its princes, but not its seers and prophets.[42] It falls to philosophers to work out the purer form of law, and

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34 Ibid., p. 399. See Ronald Dworkin, (Cambridge, Mass: Harvard University Press, 1985), pp. 18-23 and 23-28.

35 Ibid., p. 400.

36 Ibid., pp. 401, 404. "We accept integrity as a distinct political ideal, and we accept the adjucative principle of integrity as sovereign law, because we want to treat ourselves as an association of principle, as a community governed by a single and coherent vision of justice and fairness and procedural due process in the right relation".

37 Ibid., pp. 404-405.

38 Ibid., pp. 405-406.

39 Ibid., p. 406.

40 Ibid., pp. 406-407.

41 Ibid., p. 407.

42 Ibid., p. 407.

the argument moves then to the plane of political morality. But the argument still belongs to law, and its connections with ordinary legal argument is crucial, because it gives the philosophical argument a complementary role in the politics of law.[43] Philosophers offer programs likely to take hold in lawyers' imagination and this way, make the progress of law more conscious.[44] Besides, philodophers' arguments remind the judges about law beyond law, so that every decision in a hard case is a vote for a better interpretation through integrity as a paramount principle.[45]

WHAT IS LAW?

Law is an interpretative concept, and judge decides what the law is, interpreting the practice of other judges deciding what the law is.[16] Law as integrity unites jurisprudence and adjudication, but integrity does not enforce itself: Judgement is required, structured by different dimensions of interpretation melt into an overall opinion.[47] The final target being the interpretation which makes the community's legal record the best, from the point of view of political morality.[48] Integrity, as a virtue of ordinary politics, is the result of considering the political society as a community of principle which, neverthless, disagree about some important issues, as religion or even political morality.[49]

To assert that there is never one right way to decide a hard case is either a philosophical mistake or contentious political position on dubious political convictions.[50] Law is not exhausted by any catalogue of rules or principles; and law's empire is defined by attitude in courts, of course, but it must be pervasive in everybody' life, and here first.[51] It is an interpretive attitude adressed to politics that makes each citizen responsible about which are the public commitments of his community, and what these commitments require nowadays.[52]

Judges must have the last word, yes; but it does not mean itself that it be the best word, Instead, to lay principle over practice shows the best road to a better future. In its interpretive spirit, law is an expression how we are united in community through divided in project, interest and convictions.[53]

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43 Ibid., p. 408

44 Ibid., p. 409.

45 Ibid., pp. 409-410.

46 Ibid., p. 410.

47 Ibid., pp. 410-411.

48 Ibid., p. 411. "So legal judgements are pervasively contestable".

49 Ibid., p. 411. ..."we schould aim at this because, among other reasons, that conception of community offers an attractive basis for claims of political legitimacy of free and independent people"...

50 Ibid., p. 412.

51 Ibid., p. 413.

52 Ibid., p. 413.

53 Ibid., p. 413. "That is, anyway, what law is for us: for the people we want to be and the community we aim to have".