

LAW AND JUSTICE IN RONALD DWORKINS JURISPRUDENCE

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Abstract

This paper examines law and justice in Dworkin's jurisprudence as a middle course scholar between the naturalists and legal positivists' theories in philosophy of law. The aim of this research is discourse law and justice in Dworkin's jurisprudence and to also finds out whether he succeeded in solving the conflict between whether justice is just or fair based on legal rules, (procedural or legal justice), where the legal positivists' belongs or justice is just or fair in itself based on content (substantive justice), where the naturalists' belongs too. Objectively, this paper would (a) discourse Dworkin's anti-legal positivists' (b) it would expose Dworkin's basis for law, (c) it will discuss law as integrity: the basis for justice, (d) to elaborate on what justice is to Dworkin, (e) and to see how Dworkin's notion on law and justice addressed this challenges of the justice system. This research is based on a qualitative design. Data for the study were gathered from journals, books and periodicals, and were subjected to the method of philosophical content analysis and evaluation. From here, this research finds out that; there is a need for a moderate considerations, by looking at the society, individual and the purpose from the interpreters, which Dworkin believes that defending individuals' legal right are in the hands of the judges. This paper submits that they are needed to incorporate; the kind of society, the man and the purpose of the interpreter (the courts), before interpretations by the courts for a balanced legal system in our state.

Keywords: Law, Interpretation, Justice, Court, Judge.

1. INTRODUCTION

Generally, ancient and the medieval jurist conceived law to be a moral concept that is traceable to natural law, the modern jurist era interprets law as strictly positivistic which has no moral connection between law and morality. And the contemporary era on the other hand, sees law as a system of rules which in some situations require moral sting. In *Crito*, Socrates argues that, the laws take the stance that escape is unjust, for disobeying the rules would, in effect, destroy the laws and what they stand for. The state is held together by the laws, and if the latter were to fall into disarray, the former would collapse as well.¹ For Socrates, law plays a vital role in a community. The prosperity of a community indeed lies on the fact that without laws, there can be neither a state nor a community. For Dworkin, justice is giving every individuals their dues and injustice is denying that individuals his dues. He argues that government must promote equal concern and equal respect to all the citizens in the sovereign state. In *Republic*, Plato sees justice as that trait of human character which co-ordinates and limits to their proper spheres in the various

¹ Brian Duignan, *Ancient Philosophy* (New York: Britannica Educational Publishing, 2011), 32.

elements of the human psyche to permit the whole man to function well. Plato argues in support of natural law, hence, we were seeking both for what justice by itself is like, and for the perfectly just man.² While Dworkin believes that societal values in conjunction with the pre-existing 'rule-book' is what he considers to be law. *Politics* by Aristotle, following his teacher sees reason as the best possible law of human behavior. In his views, a virtuous man is a man guided by 'the rule of reason'; which is 'the right rule'.³ Both Plato and Aristotle define justice as kindness as well as a desire to follow the law, while Dworkin sees justice from the perspective of treating individuals with equal concern and equal respect. For Aristotle, in human interactions, justice was the pinnacle of excellence and the attitude that animates folks in the right fulfillment of their responsibilities. For Cicero, Law is the highest reason implanted in nature, which commands what ought to be done and forbids the opposite. Thus, the natural law is the guide for right and wrong in human affairs. He argues that both the state and its laws are subject to the laws of nature which goes beyond human authority and institutions.⁴ For him, the standard that gives rise to societal laws must be dependent on natural law which Dworkin rejects. Augustine argues that "there is no law except it is just, as any positive laws that will contradict the laws of nature are automatically null and void".⁵ Dworkin must have been influenced by this thought, which says 'there is no law except it is just', because Dworkin argues for good law as a yardstick for justice in any society. For Bentham, he argues that the purpose of government is to provide 'the greatest happiness of the greatest number' and that government should be judged on that basis.⁶ Austin like his master Bentham conceives law as command backed by sanction. He rejects the view held by the natural lawyers that law exists independent of human enactment. However, following Bentham, Austin thinks that both the legislator and the citizens should have need of some utilitarian morality.⁷ The primary aim of law for Dworkin, is to protect individual rights and not collective goal or society with the highest number, unlike Austin. It is pertinent to point out that, unlike Dworkin, Austin believes that law and morality belong to different aspects of human affairs.⁸ Hart considered rules to be the science to the key of jurisprudence. Law for him is essentially a system of rules, and a legal system is the

² Plato, *The Republic*, Trans, Allan Bloom (New York: Basic Books Inc. 1968), 472.

³ Aristotle, *Politics*, transl. with an introduction notes and appendixes by Ernest Barker (Oxford: Oxford University Press, 1958), 16.

⁴ Marcus T. Cicero, *De Republica*, ed. James Zetzel (New York: Columbia University Press, 1995), 35.

⁵ St. Aurelius Augustine, *City of God*, trans General G' Walsh et al with an introduction by Etienne Gilson (New York: Doubleday pub. Group, Inc; 1958),BK 4, Chap. 4, 16.

⁶ Jeremy Bentham, *of Law in General*, (ed) by H.L. A. Hart (London: Athlone Press, 1945), 1.

⁷ John Austin, *The Province of Jurisprudence Determined*,(ed) H.L. A. Hart, (London: Weidden-Field and Nicolson, 1954), 17-19.

⁸ John Austin, *The Province of Jurisprudence Determined*,(ed). Wilfrid Rumble (UK: Cambridge University Press,1995),21-22.

union of primary and secondary rules.⁹ For Dworkin, the law is not simply the application of rules, for there are extra-legal standards that are applied in courts and which cannot be ignored as Hart posited in his notion of law as rules. Dworkin posited that there are also standards but not only rules. These standards are for Dworkin principles, policies and other sorts of standards. Thus, he argued that in hard cases where legal rules give no clear directives to Judges on how cases should be decided, Judges resort to these other standards which are not legal rules, "but operate differently as principles, policies, and other sorts of standards".¹⁰ From what we have discussed in this section, in attempts to review what law and justice are by differences authors, let us consider Ronald Dworkin's legal departure.

2. DWORKIN'S LEGAL DEPARTURE

Dworkin criticized legal positivists on the following grounds: Three Theses; Against Judicial Discretion; and Content, Not Pedigree.¹¹ For Dworkin, the Pedigree Thesis must be rejected for two reasons. First, legal principles are sometimes binding on judges simply because of their intrinsic moral properties and not because of their pedigree. Secondly, even when these principles are binding in virtue of their pedigree, it is not possible to formulate a stable rule that picks out a principle based on its degree of institutional support. Having previously disposed of the Discretion Thesis, Dworkin concludes that legal positivism must be rejected as an inadequate theory of law. While his criticisms to Hart's, rooted on rules, principles and policies. Dworkin argues that, the positivist jurists had neglected the status and function in law and adjudication of standards, like *policies* and *principles*, which were distinct from legal rules.¹² For him, policies articulated the economic, social and other political goals of a community, and in doing so, provided a basis for the judicial interpretation of the explicit terms of the particular body of statutory legislation through which these publicly defined objectives were realized by that community. Principles, however, articulated the general requirements of fairness and justice underpinning the law and its administration. Such fundamental principles of law were typified.¹³ Despite these contrasts between rules and principles, Dworkin insisted that principles formed an integral part of the modern legal system and this truth undercut the conceptual claims of legal positivism.⁶

For Dworkin, Legal principles offer a justification for the rights and obligations enforced in hard cases which remains roots in the existing law of a community. In this way, adjudication in terms of legal principles answered to the expectations of the parties in a hard case that they were entitled to a judicial determination of their legal rights and obligations, and not merely to a discretionary

⁹ Laurenz Ramsauer, "Is the rule of recognition really a duty-imposing rule?", *Journal Of Legal Philosophy*, Vol. 48 No.2, (2023): 84.

¹⁰ Ronald Dworkin, *Is Law a System of Rules, The Philosophy of Law* (Oxford: University Press, 1977), 43.

¹¹ Simmonds, Nigel E, *Central Issues in Jurisprudence* (UK: Sweet & Maxwell 2018), 288.

¹² Dworkin, "The Model of Rules II," 57.

¹³ Dworkin, 'The Model of Rules', 46.

decision of the substantive issue at stake in their particular dispute.¹⁴ And this leads us to Dworkin's later ideas law proper.

3. DWORKIN'S CONCEPTION OF LAW

For Dworkin, the traditional conception of the law and morality relation sees each as a "collection of norms"¹⁵ that forms an independent system. The classical question, he asked is whether and how "the content of each system affects the content of the other."¹⁶ He asks this question from each side of the relation. In thinking about how the content of law affects the content of morality, the classical question is whether we have a moral obligation to follow the law. In thinking about how the content of morality affects law, the traditional question is "how far is morality relevant in fixing law's content on any particular issue?"¹⁷ Dworkin, then, places his own earlier 'interpretivism' alongside 'positivism' and 'natural law' as approaches that have accepted the traditional conception in giving answers to these traditional questions.

Dworkin asks "how law should be distinguished from the rest of political morality."¹⁸ While this formulation might seem to imply a resurrection of the two-system schema, Dworkin adds that he means to consider "how these two interpretive concepts should be distinguished to show one as only part of the other."¹⁹ From the above, Dworkin believes that political rights are both history and morality which the judges must put into serious consideration in the course of legal adjudication.

Dworkin cautioned: "To say that someone has a 'legal obligation' is to say that his case falls under a valid legal rule that requires him to do or to forbear from doing something."²⁰ In the process of defending the one right answer thesis, on the one hand, in the center of "Hard Cases", Dworkin constructs an imaginary judge named Hercules. He argues;

A lawyer of superhuman skill, learning, patience and acumen, whom I shall call Hercules... a judge who accepts the main uncontroversial constitutive and regulative rules of the law in his jurisdiction...that is, that statutes have the general power to create and extinguish legal rights, and that judges have the general duty to follow earlier decisions of their court or higher courts whose rationale... extends to the case at bar.²¹

On the other hand, in the core of "Can Rights be Controversial?" He continues with his defensive move: "My arguments suppose that there is often a single right answer to complex questions of

¹⁴ Covell, *The Defence of Natural Law: A Study of the Ideas of Law and Justice in the Writings of Lon L. Fuller, Michael Oakeshot, F. A. Hayek, Ronald Dworkin and John Finnis*, 149.

¹⁵ Dworkin, *Justice for Hedgehogs* (Cambridge: Harvard University Press, 2011), 252.

¹⁶ Dworkin, *Justice for Hedgehogs*, 252-3.

¹⁷ Dworkin, *Justice in Robes* (Cambridge: Harvard University Press, 2006), 2-5.

¹⁸ Dworkin, *Justice for Hedgehogs*, 255.

¹⁹ Dworkin, *Justice for Hedgehogs*, 255-6.

²⁰ Ronald Dworkin, "Hard Cases", *Harvard Law Review*, Vol. 88, No. 2, (March 1975), 105-6.

²¹ Dworkin, "Hard Cases", 279.

law and political morality. The objection replies that there is sometimes no single right answer, but only answers.”²² Dworkin believes that the one right answer is possible through the constructive interpretation of our preexisting legal materials.

3.1 Law as Constructive Interpretation

In *Justice for Hedgehogs*, Dworkin uses the term *Fit and Justification*, he offered a view of interpretation distinguish between easy cases, where the legal sources did the work as legal formalist would argued, and hard cases, in which judges were required to move beyond the rules that were explicit in legal texts (such as constitutional provisions, statutes, and cases) and resort to principles.²³ At this stage, Dworkin explicitly distinguished between the criteria of “fit” and “justification,” and suggest;

A two-step process, step one: identify the set of possible legal rules that fits the existing institutional history (e.g., the texts of the authoritative legal materials). If there is only one rule that fits, or if all the rules that fit favor the same resolution of the case, then we need not proceed beyond step one. Step two: select from among those rules on the basis of the principles or values that provide the best justification for that institutional history.²⁴

The reading of *Hard Cases* may be controversial, though supported by the text. For example, in introducing the idea of a hard case, Dworkin states, “if the case at hand is a hard case, when no settled rule dictates a decision either way, then it might seem that a proper decision could be generated by either policy or principle.”²⁵

In the *Justice for Hedgehogs*, Dworkin also introduced *The Unity of Interpretation*. This brings us to the third stage in the development of Dworkin’s theory of interpretation. In *Justice for Hedgehogs*, he argues that both law and morality are interpretive.²⁶ He further posited that interpretation is a general normative practice, and that law and morality, as well as a variety of other human activities, are best understood as instances of interpretation. Therefore, law as constructive interpretation shows integrity from the adjudicators which is the basis for justice in any sovereign state.

3.2 Law as Integrity: Basis for Justice

Dworkin develops a complex and fascinating account of integrity that was presented in *Law’s Empire*, 1986, where he posits that judges interpret the law; hence, legal practice as a whole is an exercise in constructive interpretation.²⁷ For Dworkin, constructive interpretation is judicial

²² Youngwon Lee, (eds), *Research Handbook on Natural Law Theory* (USA: Edward Elgar, 2019), 81.

²³ Allan Beever, *Law’s Reality: A Philosophy of Law* (USA: Edward Elgar Publishing Limited, 2021), 412.

²⁴ Ronald Dworkin, *Justice for Hedgehogs*, (Cambridge: Harvard University Press, 2011), 120.

²⁵ Dworkin, “*Hard Cases*”, 1058-60.

²⁶ Dworkin, *Justice for Hedgehogs*, 253.

²⁷ Dworkin, *Law’s Empire*, 166.

decision-making, are in three stages. The first, the pre-interpretive stage that deals with the rules and standards that hold relevance to the case at hand are tentatively identified. The second, the interpretive stage, the judge formulates a general theory of the motivations and rationales underlying the elements of practice identified in the previous stage. And the third stage, post-interpretive stage. The judge forms a view about what decisions of the prevailing social practice requires in the present case, taking into the account of the general framework of justification posited at the preceding stage.²⁸ Dworkin's *integrity* in his *Law's Empire* was derived from "a parallel ideal of personal morality for him, even when someone disagrees on moral or ethical issues, we admire them if they stick with their principles, acting according to convictions that inform and shape their lives as a whole, rather than capriciously or whimsically."²⁹

In Dworkin's opinion, Integrity is a distinctive political value. He views it as a legal decision-making, from two dimensions: integrity in legislation and integrity in adjudication. Integrity in legislation requires the legislature to make the laws morally coherent, bearing in mind a set of overarching values as well. It is a quality expected of a legal mind and community. On the other hand for Dworkin, integrity in adjudication requires judges to treat the law "as expressing and respecting a set of coherent principles."³⁰ He argues that integrity in legislation is so much part of our political practice that no competent interpretation of that practice can ignore or leave it out. For Dworkin, the value of integrity in adjudication is best explanation to judicial practice. The adjudicative principle of integrity is a kind of judicial virtue expected of a judge, and then the exercise of this principle is dependent on what the judge recognizes as law. And these lead us to Dworkin's ideas on justice because he argues that law as integrity is the basis of justice in sovereign state.

5. DWORKIN'S THEORY OF JUSTICE

Dworkin discussion will consist of a description of Dworkin's theory as well as an elaboration of his theory to deal with problems which Rawls' theory is unable to deal with. It will elaborate on 'equal treatment' and 'treatment as an equal' and many more. Dworkin argues for a particular version of liberal egalitarianism which he calls 'Equality of Resources'. There are, however, two possible ways of construing 'equality' which are consonant with this liberal presupposition. The first of these is 'equality as equal treatment'. A person has been given equal treatment when she receives "the same distribution of goods or opportunities which anyone else has or is given".³¹ The second is, 'equality as treatment as an equal'. Treatment as an equal refers "not to an equal distribution of some good or opportunity, but the right to equal concern and respect in the political decision about how these goods and opportunities are to be distributed".³² The crucial difference

²⁸ Dworkin, *Law's Empire*, 65-68.

²⁹ Dworkin, *Law's Empire*, 166-7.

³⁰ Dworkin, *Justice in Robes*, 9-21.

³¹ Ronald Dworkin, *Taking Rights Seriously* (Harvard Univ. Press: Cambridge, Mass., 1977), 273.

³² Dworkin, *Taking Rights Seriously*, 273.

between these two conceptions of equality is that treatment as an equal takes the personal circumstances of those under consideration into account while equal treatment does not.

In developing his Equality of Resources theory, Dworkin is interested in arriving at a distribution of resources which will result in all the parties being treated as equals rather than simply receiving equal treatment. And this leads him to introduce the initial auction for a better understanding of justice in terms of individuals. Dworkin is able to avoid Rawls' difference principle where the better-off must forgo substantial losses in order that the worst-off can realize small gains. Dworkin's theory aims to provide a description (or rather a set of devices) for aiming at equality of resources person by person, and the considerations of each person's history that affect what he should have, in the name of equality, which do not include his membership in any economic or social class.³³ Since Dworkin's theory considers the positions of all parties in order to determine what constitutes a just distribution, it would not call for the problematic redistribution that Rawls' theory calls for. In this way, the fourth problem with Rawls' theory is dealt with.

5. RESPONSES TO DWORKIN ON LAW AND JUSTICE

Hart's argues in response to Dworkin's criticisms to legal positivist on: pedigree, discretion, and the thesis of legal obligations. Pedigree thesis refers to Hart's concept of rules regarding recognition or the rule of recognition, that the legal validity of law is determined by social facts; support by the power enforcement agencies but not by morality Hart blamed Dworkin over such assessment. Hart posits that, "the rule of recognition as the legal validity criterion of law does not encompass only pedigree aspects but at the same time virtue and justice."³⁴ Hart even sincerely admitted in some legal systems that the validity criterion of morality of law. For Hart, the rule of recognition as the definitive validity criterion of law is not univocal. Each of community has its different provisions. Rule of recognition can be king's decision, habit, court decisions, legislative voting, or moral norms. Hart argued that the principle and morality, as far as socially accepted as valid as the judge and authorized officers have agreed upon in a certain legal systems may become the final criterion of legal validity of the primary law.³⁵ Following Hart's defensive argument we can say that Dworkin's delineation of the rule of recognition by equating it with the supreme law is inappropriate.

Raz argues in his *Ethics in the Public Domain* that Dworkin explaining the nature of law is offering an interpretation of the law. Dworkin explains interpretation as constructive interpretation of which the interpretation of the law is an instance, is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong.³⁶ Here, interpretation is defined in terms of strong monistic coherence. The tendency toward strong

³³ Dworkin, *Law's Empire*, 340.

³⁴ Hart, "Postscript", *The Concept of Law*, 241.

³⁵ Hart, "Postscript", *The Concept of Law*, 250.

³⁶ Joseph Raz, *Ethics in the Public Domain*, (Oxford: Oxford University Press, 2001). 290.

coherence seems to reappear when Dworkin introduces integrity: It will be useful to divide the claims of integrity into two more practical principles. The first is the principle of integrity in legislation, which asks those who create law by legislation to keep that law coherent in principle. The second is the principle of integrity in adjudication: it asks those responsible for deciding what the law is to see and enforce it as coherent in that way.³⁷ Dworkin's first principle is to guide legislators in making law. Raz argues that his concern is with the second principle, which determines both how cases are to be decided and what the law is, because for Dworkin, these two questions are one and the same. How the courts should determine the law is far clear from this statement. What stands out is the duty to see the law as coherent. But does the principle as stated really express an endorsement of coherency? Raz argues that, according to law as integrity, "propositions of law are true if they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice".³⁸ Raz, therefore argues that, It is especially important to remember that there is nothing in *Law's Empire* to suggest that the principles of justice are not themselves irreducibly plural, and the same is true of fairness and procedural due process.³⁹

For Leslie Green, who criticized Dworkin's on the notion of law as integrity? He holds that for Dworkin, "the community has its own principles, it can itself honor or dishonor, it can act in good or bad faith, with integrity or hypocritically, just as people can."⁴⁰ A community with integrity is a community of principle, and it satisfies the conditions of true community as well as can be expected in the real world. "A community of principle . . . can claim the authority of a genuine associative community and can therefore claim moral legitimacy, which its collective decisions are, matters of obligation and not bare power in the name of fraternity."⁴¹

For Green, Dworkin's theory of integrity is complex and merits discussion in its own right. Green argues to only examine its relevance to the problem of legitimacy. If integrity is important only because it shows that the conditions of true community are satisfied, and then it adds nothing to the argument already considered and rejected, for true community is not sufficient for obligation. That, however, leaves open the possibility that a state with integrity is both a true community and, on independent grounds, a legitimate one.⁴²

³⁷ Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986), 52.

³⁸ Justine Burley, *Dworkin and his critics: with replies by Dworkin* (UK: Blackwell Publishing Ltd, 2004), 411.

³⁹ Dworkin, *Law's Empire*, 268.

⁴⁰ Thomas Schelling, "Economic Reasoning and the Ethics of Policy" *The Public Interest*, Vol. 63, (1981), 60.

⁴¹ Youngwon Lee, *Research Handbook on Natural Law Theory* (UK: Edward Elgar, 2019), 117.

⁴² L. Green, "Law and Obligations" in J. Coleman and S. Shapiro (eds.), *Oxford Handbook of Jurisprudence and Legal Philosophy* (Oxford: Clarendon Press, 2002), 514.

6. EVALUATIONS OF LAW AND JUSTICE IN DWORKIN'S JURISPRUDENCE

Dworkin emphasizes that judge is “disciplined, under the moral reading by the requirement of constitutional integrity.”⁴³ Integrity, according to Dworking, constrains judges in several ways. First, it requires that judicial decisions be consistent with the dominant lines of constitutional precedent and with the structural design of the constitution as a whole. Second, it insists that judges decide constitutional case on the basis of principle, not policy or political accommodation. Third, it also demands that judges will be willing to apply the relevant principle consistently in other case in which it is fairly implicated.⁴⁴ In this way, Dworkin remarks that law is made steadily more coherent, and political morality is brought into the heart of constitutional law. Meanwhile, as a follower of Dworkin from the liberal perspective, we observed the followings as his deficiencies in law as integrity as the basis for justice. First, Dworkin fails to separate law from interpretation. For him, consistency in interpreting societal values paves ways for law as integrity which will guarantee justice in any sovereign state. But the question is, being consistent in interpreting moral fabrics to like as likes and unlike as unlikes’, does it upholds justice in any state. And the answer to this question should be that, Dworkin’s ideas of consistent will also leads to double standard or difference principles which will aid injustice in our society. Secondly, Dworkin noted that personal morality of anyone is very important in law as integrity, by this; he has reduced judges being consistent in their interpretation to individuals’ personal integrity. Third, Dworkin’s ideas of law as integrity fails to considered society which the interpreter may come out from and the roles of the government in power to the judiciaries as well.

8. CONCLUSTION

In reformation of Dworkin’s law as integrity, we argue for moderates considerations of appointing the interpreters (judges) in any state. The moderates considerations of appointing the interpreters should consider the followings: First: Sociological point of view, argues that judgment is relative depending on the society. This means that in considering of integrity in any judicial issues then society must be consider because no one will talk about community which he is not part of. Second: We argue from the anthropological point of view, integrity has to do with man and we should ask what kind of judge is involved because; he is a human as well. Secondly, Dworkin fails to set out a realistic view on the kind of human-being who should qualifies to be accepted as a judge but considered an imaginary judge which he called Hercule. Third: We argue from bad man point of view of law. Law is viewed from the consequences that the judge argues for or against. We argue from two perspective: one, law is considered from the end product of the society which means to keep the integrity of the future of our legal system and two, the negative implication which it

⁴³ Lorenzo Zucca, “Exist Hercules: Ronald Dworkin and the Crisis of the Rights”, *Journal of Ethics and Politics*, Vol. 5, No. 5 (Nov., 2013), 194.

⁴⁴ Ronald Dworkin, *Freedom’s Law: The Moral Reading of the American Constitution* (Oxford: Oxford University Press, 1996), 10.

should caused to the judge who rules over against what is entrust in him, because legal liberalism argues that “the confidence in the ability of courts to change society for what judges believe is the best for the society.”⁴⁵ We continue and pointed that they should be dead penalty against any judge who inconsistently interprets case for her gains against the protection, reservation of the future of our judicial system. From here, this paper submits that Dworkin middle ground course between naturalists, (substantial justice) and legal positivist (procedural justice) will attend some level of balanced justice when consider man, environments, the propose of the interpreter as well.

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⁴⁵ McGill, Jena and Amy Salyzyn, “Judging by Numbers: How Will Judicial Analytics Impact the Justice System and Its Stakeholders?” 44 *Dalhousie Law Journals* (2021), 279.

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