LEGAL REASONING IN JUDICIAL PROCESS

Ravinath Tiwari,
Guest Faculty in Allahabad Degree College, Allahabad
(A Constituent College of University of Allahabad)

Legal reasoning is an art; it is not a science. If legal reasoning is presented as a mechanical science, these erroneous beliefs are reinforced. If, however, cases are discussed without any meaningful analytical structure, it may conclude that there is no method to legal reasoning. Certainly, the challenge lies in designing a strategy that incorporates technique and imagination skills, substance, control and flexibility[1].

It has become almost platitudinous to complain that the law is sometimes too logical. Logic, it is said, speaks less as a language than as a code, and is too rigid and inflexible to deal with the complex and dynamic problems that constitute the law's chief concern. Thus, the following observations made on different occasions illustrates the same -

"The life of the law has not been logic: it has been experience.[2]"

"Every lawyer must acknowledge that the law is not always logical at all[3]".

"In any contact between life and logic, it is not logic that is successful"[4].

"A page of history is worth a volume of logic[5]."

"There is a danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom,it will convert the constitutional Bill of Rights into a suicide pact[6]."

MEANING

Some legal theorists regard the questions, 'what is the law?', and 'how should judges decide cases?' as distinct questions with distinct answers. That is to say, their accounts of law and their accounts of adjudication are not one and the same, and they contend that in settling disputes which come before them, the remit of judges is wider than merely trying to establish what the law is as regards the issues in the case at hand. In adjudication, such theorists claim, extra-legal considerations can come into play, and judges may have discretion to modify existing law or to fill in gaps where existing law is indeterminate. This being so, for some legal theorists, the first formulation above, that legal reasoning is reasoning about the law, is ambiguous between:

(a) Reasoning to ***establish the content of the law*** as it presently exists, and

(b) Reasoning from that ***content to the decision*** which a court should reach in a case which comes before it.

Moreover, the second formulation of the ambit of legal reasoning given above, i.e. that legal reasoning is about how judges should decide cases, is also ambiguous on some approaches to legal theory. This is because the answer to the question, "how should a court decide a case, reasoning from the existing law applicable to it?" (i.e. legal reasoning in the sense given in (b) above) and the answer to the question, "how should a court decide a case, all things considered?", may sometimes come apart. A particular instance might be the kind of situation which could arise for a judge in a 'wicked' legal system where the law on some issue is so morally odious that, all things considered, the judge should not decide the case according to the law at all, but rather should refuse to apply the law.

There are thus three things (at least, there may be others) which legal theorists could mean by legal reasoning:

(a) Reasoning to establish the existing content of the law on a given issue,

(b) Reasoning from the existing content of the law to the decision which a court should reach in a case involving that issue which comes before it, and

(c) Reasoning about the decision which a court should reach in a case, all things considered[7].

Legal reasoning, strictly speaking, must be distinguished from the full universe of reasoning and decision making that happens to take place within the legal system. Juries, for example, make decisions in court that have legal consequences, but no one claims that the reasoning of a juror is other than that of the ordinary person, even though the information that jurors receive is structured by legal rules and determinative of legal outcomes. When Coke and Kings field were glorifying legal reasoning, they were thinking of lawyers and judges and not of lay jurors. Similarly, police officers, probation officers, and even the legislators who make the laws are undeniably part of the legal system, yet the typical claims about the distinctiveness of legal reasoning do not apply to them. Clearly, the institutions and procedures of the legal system affect decision making, but the traditional claims for the distinctiveness of legal reasoning go well beyond claims of mere institutional and procedural differentiation.[8]

THE ROLE OF COHERENCE IN LEGAL REASONING

As several commentators have noted, coherence theories, long influential in other areas of philosophy have more recently found their way into the philosophy of law. Coherence, in the sense of interpreting the law as speaking with one voice as integrity requires, is a value which is supposed to have special relevance in the legal realm, in terms of the role which it should play in guiding judges seeking to interpret the law correctly. It has also been noted that features of the law such as the doctrine of precedent, arguments from analogy, and the requirement that like cases be treated alike seem particularly apt to be illuminated via some kind of coherence explanation. Moreover, the idea of coherence as a special virtue of interpretation in legal reasoning plays an important role in the work of several major continental legal philosophers.

The following discussion attempts to explore some of these issues concerning whether and why considerations of coherence have an important role to play in understanding law. As this entry seeks to illuminate the role of coherence in legal reasoning, the emphasis here is on coherence accounts of adjudication, and on examining the role which coherence plays in courts' reasoning about how to decide cases according to law. This being so,legal reasoning in the sense outlined in formulation reasoning from the content of the existing law on a given issue to the decision which a court should reach in a case involving that issue which comes before it.

WHAT CONSTITUTES COHERENCE?

Two central questions must be addressed in considering the role of coherence in legal reasoning:

- what is the nature of the coherence relation which features in coherence accounts of adjudication, and
- what role does coherence play in explaining or justifying judicial decisions in such accounts?

Amongst those legal theorists taking an interest in the role of coherence in legal reasoning, there is general agreement both that the coherence in question must amount to more than logical consistency amongst propositions and that it is not clear from many coherence accounts exactly what this something more amounts to views coherence in terms of unity of principle in a legal system, contending that the coherence of a set of legal norms consists in their being related either in virtue of being the realisation of some common value or

values, or in virtue of fulfilling some common principle or principles. Raz[9] also characterises coherence in law in terms of unity of principle. On his view, the more unified the set of principles underlying those court decisions and legislative acts which make up the law.

Other writers have attempted to supply a more formal definition of, for example, a minimally coherent legal system[10] , or otherwise to flesh out in a more detailed manner the criteria of coherence.

A further characterisation of the kind of coherence which is to be sought in legal reasoning may be found in Ronald Dworkin's work. Many writers regard Dworkin's account of integrity in adjudication as an example of a coherence account. (Hurley[11]; Marmor[12]. Kress[13], although writing before Dworkin had fully developed his account of law as integrity, also views Dworkin as offering a coherence account of adjudication. Raz 1994a disputes the idea that Dworkin's account of law should be understood as a coherence account.) On this view, judges should try to realise the value of coherence in judicial decisions by interpreting the law as 'speaking with one voice', i.e. they should identify legal rights and duties on the basis that they were all created by a single author, the community personified.

Dworkin has cited several cases to illustrate the same such as in-

Henningsen Vs. Bloomfield Motors, Inc[14].,

A landmark case in products liability. Henningsen signed a contract limiting the automobile manufacturer's liability to "making good" defective parts. After an accident caused by a defective part, he sued the manufacturer for medical costs and other expenses of those injured. A simple appeal to legal rules would have permitted the manufacturer to stand on the contract, but the court held for Henningsen, citing principles such as, "'the courts generally refuse to lend themselves to the enforcement of a 'bargain' in which one party has unjustly taken advantage of the economic necessities of the other,' " and "[in a society such as ours, where the automobile is a common and necessary adjunct of daily life, and where its use is so fraught with danger to the driver, passengers and the public, the manufacturer is under a special obligation in connection with the construction, promotion and sale of his cars."Again the principles overrode the rule. The defendant had to pay for medical costs although this conclusion was not necessitated by the principle.

Dworkin defines a principle as "a standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality."', Principles are characterized by the dimension of weight or importance; rules are not. Additionally, in cases involving several principles, resolution requires the assignment of relative weights to each. Of course, it does not follow from these differences that rules do not often result from the application of principles[15]. Again he mentions the case of

Riggs Vs. Palmer[16],

The court had to decide whether a person who had murdered his grandfather could inherit the wealth left him in his grandfather's will. The court recognized that the "statutes regulating the making, proof and effect of wills . . . if literally construed . . . give this property to the murderer". But the court continued to note that "all laws as well as all contracts may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime." This principle overrode the rule and the murderer was not permitted to inherit under the will.

Judges must be prepared not only to extend principles to apply to new conditions, but also to recognize that established legal principles or rules may be based on irrelevant or arbitrary criteria for the differential treatment of persons or groups. The principled application of such rules results in grave

injustice. This, of course, is the whole point of those who cry for justice rather than mere law and order or uniform treatment. Laws that discriminate or permit discrimination on the basis of race, sex, or age when these criteria are irrelevant are examples of principled but unjust order. The relevance of criteria, however, cannot always be spelled out in advance. New empirical knowledge of factors causally related to certain ends or purposes properly force reconsideration of laws or precedents that distribute goods and services on grounds that did not take this knowledge into account.

Plessy Vs. Ferguson[17]

In this case the decision was predicated on the assumption that separate but equal schooling facilities for whites and blacks were possible. The sociological and psychological data uncovered by Kenneth Clark and others, which was an important empirical premise in the overturning of Plessy, showed that the mere separation by race, even with comparable school facilities and faculties, precluded equality of educational opportunity, in direct contradiction to the rationale of Plessy.What constitutes justified reasons for exceptions and extensions of principles? There is no simple answer to this question. It surely depends on the context and circumstances within which the principle or law operates; on the purpose of the law and whether its application is accomplishing that purpose.[18]

Legal, and especially judicial, reasoning is a complex combination of practical wisdom (phronesis), craft (techne) and rhetoric (rhetorica).These three concepts have unique concerns, components, distinctive characteristics, and measures of success. While these concepts, when taken individually, provide an incomplete and even dangerous account of legal reasoning, these dangers are overcome when they are united to form the bedrock characteristics of the good lawyer and judge. The virtues of intellect and character inherent to practical wisdom temper the risks associated with craft and rhetoric. Practical wisdom imbues craft with a moral dimension that it otherwise lacks and elevates rhetoric above mere sophistry. Craft's connection with the past tempers the troubling tendencies associated with practical wisdom and rhetoric. Craft balances the elitist and arrogant tendencies of practical wisdom by adding an aspect of humility and grounds rhetoric in a tradition that helps limit rhetorical excesses. Rhetoric's commitment to giving reasons makes practical wisdom more articulate and craft less secretive, cunning, and tricky. Only in combination do practical wisdom, craft, and rhetoric create a balanced, complete, and compelling account of legal reasoning[19].

However the general distrust of logic derives from five typical situations in which the process by which a result is reached is termed "logic."

First, a court sometimes takes a short-cut to a decision by taking a word in its literal sense, ignoring its context or the purpose of the rule in question. Here, "logic" is mistaken for a belligerent precisionism, for an excessive adherence to the literal or settled meaning of a word, for what Cardozo called "the bark of a hard and narrow verbalism"[20].

Second, a court may indulge its ingenuity with the result "not interpretation, but perversion."

Third, a court is often faced with rules of law which are seemingly inconsistent when in reality the principle underlying one does not encompass the other." Suppose, for example, that in real property things attached to the land are deemed part of the land. In certain aspects of New York tort law, however, the principle and its justification have no application." Thus, one cannot say, "If p, then q," but merely, "If p, usually q." Of course, it is typically queried why q is produced in this case and not in that case, if p is operating in each instance? "Logic" here stands, first, for the view that all rules in the law should apply throughout the law, or in an extreme form, that elegantia juris demands that the detailed rules should all be deductible from a few basic principles. And, second, "logic" represents the

simplistic conviction that p alone sufficiently predetermines q. In either case, the detractors ultimately are forced to argue not that legal reasoning is too logical, but that it is not logical enough.

Fourth, courts sometimes deliberately maintain contradictions: they occasionally adopt a principle which entails the negation of a pre-existing contrary principle, either explicitly or sub silentio, "while simultaneously protesting their concern for consistency and reason. Nonetheless, rhetorical hypodermics can keep a dying principle alive only so long, and it is the hand that holds the needle that is at fault and not the serum.

Finally, the oracular tradition in which the American judge operates often compels him to appear "a mere rabbinical automaton with no more give and take in his mind than you will find of a terrier watching a rathole."[21]

[1] Khan, Ali, Learning Legal Reasoning. Washburn Law Journal, Vol. 30, 1991 , p 265.

[2] 0. HOLMES, THE COMMON LAW 1 (1881) cited in www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2470 accessed on 24 jan 2013 at 6:00p.m

[3] Quinn v. Leathem [1901] A.C. 495, 506 (Halsbury, J.). cited in ibid

[4] H. LASKI, STUDIES IN THE PROBLEM OF SOVEREIGNTY 201 (1917) cited in ibid

[5] New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921) (Holmes, J.).cited in ibid

[6] Terminiello v. Chicago, 337 U.S. 1, 37 (1948) (Jackson, J., dissenting)cited in ibid

[7] http://plato.stanford.edu/entries/legal-reas-interpret/ accessed on 23 nov 2012 at 11:14 p.m

[8] Spellman, Barbara A. and Schauer, Frederick, Legal Reasoning (February 7, 2012). Virginia Public Law and Legal Theory Research Paper No. 2012-09. Available at SSRN: http://ssrn.com/abstract=2000788 accessed on 23 feb 2013 at 6:00p.m.

[9] Raz, J., 'The Relevance of Coherence' in Raz, J., Ethics in the Public Domain, Clarendon Press, Oxford cited in (http://plato.stanford.edu/entries/legal-reas-interpret/ accessed 23/nov/12 at 11:14 p.m).

[10] Levenbook, B.B., 'The Role of Coherence in Legal Reasoning', Law and Philosophy,1984, 3: 355–74.cited in ibid.

[11] Hurley, S., Natural Reasons, Oxford University Press, Oxford 1989 ; Hurley, S., , 'Coherence, Hypothetical Cases, and Precedent', Oxford Journal of Legal Studies,1990, 10: 221–51(cited in ibid)

[12] Marmor, A., Interpretation and Legal Theory, Clarendon Press, Oxford 1992; Marmor, A., Interpretation and Legal Theory, revised 2nd edition, Hart Publishing, Oxford, 2005(cited in ibid)

[13] Kress, K., 'Legal Reasoning and Coherence Theories: Dworkin's Rights Thesis, Retroactivity, and the Linear Order of Decisions', California Law Review, 72: 369–402, 1984.(cited in ibid)

[14] 32 N.J. 358, 161 A.2d. 69 (1960)(cited in WILLIAM T. BLACKSTONE, JUSTICE AND LEGAL REASONING, William and Mary Law Review 321 (1976), ,Vol 18, Issue 2, Article 5,p328-329)

[15] WILLIAM T. BLACKSTONE, JUSTICE AND LEGAL REASONING, William and Mary Law Review 321 (1976), ,Vol 18, Issue 2, Article 5,p328-329

[16] 115 N.Y. 506, 22 N.E. 188 (1889) (cited in ibid)

[17] 163 U.S. 537 (1896)

[18] WILLIAM T. BLACKSTONE, JUSTICE AND LEGAL REASONING, William and Mary Law Review 321 (1976), ,Vol 18, Issue 2, Article 5,p324-325

[19]Brett G. Scharffs, "The Character of Legal Reasoning" , http://law.wlu.edu/deptimages/Law%20Review/61-2Scharffs.pdf accessed on 30 jan 2013 at 3:00p.m

[20] Schuylkill Trust Co. v. Pennsylvania, 296 U.S. 113, 129 (1935) (Cardozo, J.,dissenting)cited in www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2470 accessed on 24 jan 2013 at 6:00p.m

[21] www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2470 accessed on 24 jan 2013 at 6:00p.m