Is There No Single 'Right' Answer in Law?
An Evaluation of Legal Reasoning

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This article argues that there is no single 'right' answer in law by analysing the components of legal reasoning as they exist and the legal complexities and complications that surround them. This article discusses the ambiguity of certain components in the reasoning process. It critiques the judiciary and the sway of their unconscious judgements, in particular reference to the Case of the Speluncean Explorers. *Finally, it briefly outlines the contrasting legal schools of thought in order to explore the differing verdicts they can provide, and the struggle between morality and law.*

Introduction

In common law, syllogistic reasoning has been a key structure employed in forming logical arguments in cases. It is a fairly simplistic concept of legal reasoning, the idea of a logical argument being deduced from two premises: minor and major. The former makes a factual assertion of a situation, whilst the latter usually states a general rule. Although the method of logical syllogism may provide an answer, there is a lot of controversy surrounding the idea that there is only one 'right' answer. The process is not mechanical like science, and it is sometimes difficult to verify the minor premise due to the subjective nature of the law. There is no such thing as the method of law; facts can not only be interpreted, but can also be manipulated and artificially constructed to fit a case.[1] At the same time, judges' personal values and attitudes to a statement of fact can lead to an inarticulate major premise, which places emphasis on the idea that there is more than one judgement. Judges have to consider the political and economic elements of society. From natural law to legal positivist approaches, judges take a range of theoretical positions and their legal ideologies vary, which exemplifies the idea there is no single answer in legal reasoning. The case of the Speluncean Explorers is indicative of the different positions that judges can take.

The ambiguity of the premise

The manipulation and interpretation of the minor premise hinders the possibility that there is one so-called 'right' answer. The minor premise will either be proved to the satisfaction of the court or agreed on between the parties.[2] Although it can be argued that the minor premise would surely lead to one right answer given that it provides one proposition, the facts of a case may be influenced to provide other answers. There is scepticism surrounding the truth of the minor premise in hard cases, whereby the law is not clear as to who the judge should rule in favour of, often due to a lack of relevant precedent. In said circumstances, the statements of fact are sometimes constructed for the case. The manipulation of facts demonstrates how advocates can process the case facts to support differing arguments, thus indicating that the legal reasoning is not entirely objective. In *Burns,*[3] for example, the identity of 'Mrs Burns', as revealed in the reported facts of the case, is merely a distorted creation which demonstrates how facts can be based on subjective views.[4] Similarly, legal philosopher Jerome Frank states that 'facts are not "data"...[they are] not something that is given, [but rather], they are processed by the trial court [and are], "made" by it, on the basis of [the trial court's] subjective reactions to the witnesses' stories'.[5] Moreover, Steven Cammiss comments that testimonies 'are rarely

[1] Jerzy Stelmach and Bartosz Brozeck, *Methods of Legal Reasoning* (Springer 2005) 2.
[2] Ian McLeod, *Legal Method* (9th edn, Palgrave Macmillon 2013) 12.
[3] *Burns v Burns* [1983] EWCA Civ 4.
[4] Dawn Watkins, 'Recovering the lost human stories of Law: Finding Mrs Burns' (2013) 7(1) *Law and Humanities* 68-90.
[5] Jerome Frank, *Courts on Trial: Myth and Reality in American Justice* (Princeton University Press 1950) 23-24.

delivered fully formed; rather, [they are] largely...a result of the control of witnesses by lawyers' in order to exploit the facts of a case.[6] This indicates how legal reasoning can be manipulated to form different answers. On the other hand, Niko Soininen argues that in easy cases, where the law can be identified and applied straightforwardly, the interpretation of the law adopted is the only possible one and is, therefore, 'objective'. There is no ambiguity about the normative or the factual premises in easy cases, yet some critics have argued that there are no easy cases and, therefore, no single right answer to legal reasoning.[7]

Judicial decision making

Having discussed the interpretation and manipulation of the minor premise, it is now necessary to consider the impact of the judiciary's decision making in legal reasoning; in particular the differing attitudes of judges to statements of fact. It appears that there is no single 'right' answer in legal reasoning since judges often hold different values and standards. Hence, judges tend to differ in their decision making. Judges are influenced by their individual values and preferences, meaning that cases can be decided differently depending on the given judge.[8] The fact that they hold their own views suggests that there is a degree of subjectivity involved in their decision making. A judge's decision making in regard to statute may be influenced by factors in their environment such as politics and economics. Hence, a legal argument may sometimes go beyond the texts themselves and include a variety of extrinsic materials.[9] Given that judges have their own individual opinions, Oliver Wendell Holmes argues that in legal reasoning, 'behind the logical form lies a judgment, often an inarticulate and unconscious judgment' and places emphasis on the notion that 'you can give any conclusion a logical form'.[10] This implies that there can be a variety of answers. Holmes suggests that there is an implied attitude on the part of the judge which indicates that there is an 'inarticulate major premise' since 'the major premise is formulated from those legal sources which the legal system accepts as being authoritative'.[11] Whilst Holmes comments on an inarticulate judgement, Ronald Dworkin comes to the conclusion that there are 'right' answers. Soininen argues that there are indeed some easy cases in which 'formal logic is the only used form of interference that can be used as the sole justification of the case'. He suggests that only in easy cases one right answer, or one single 'objective' interpretation, exists.[12] In contrast, Lady Hale states that 'we can all think of cases in which the result would have probably been different if the panel had been different'.[13] Even easy cases with 'clear' words have to be interpreted: 'the judge consistently faces various substantive choices not only in hard cases but also in purportedly easy cases'.[14] This suggests that it is down to the subjective values that each individual judge holds, regardless of how easy or hard a case is.

In cases such as *Poupard* [15] and *Bourne*,[16] there is no doubt that judges can be influenced by their individual values and as a consequence, provide inarticulate judgements. In *Poupard*, for example, a court with different sympathies could have upheld, with equal or greater logic, the argument that the weekly outgoings were outgoings rather than income, which demonstrates how a different court would come to a different judgment.[17] This idea is further supported in *Bourne* where it was not surprising that the taxpayer lost, given Lord Justice Stamp's unconscious and subjective judgement. The main conclusion to be derived from the case law is that judges provide different reasoning in cases, some more inarticulate than others.

The three schools of legal theory

Lon Fuller's fictional case of the Speluncean Explorers provides an illustration of a case where there were a number of differing judgements.[18] Fuller uses this hypothetical case just to emphasise how widespread and varied judges' views can be within a single case, and in turn, the wide scope of answers and judgements in one case. Speluncean Explorers demonstrates this through the varied verdicts from the Justices. On only one set of facts, the Justices came to divergent opinions - two to convict, two to acquit, and one abstention. It is not simple to provide a verdict; 'judges have to deal with legal, ethical and moral questions when making their decisions'.[19] There are abstract theoretical issues, which shape the law with differing stances and highlight the reasoning behind the diverse range of answers and theoretical positions within a particular case.

The nature of law is influenced by different positions of legal thought. There are, in particular, three schools of legal theory which lead, inevitably, to a diverse range of answers within a given case. The three legal theories contrast with each other. Natural law considers that law and morality are connected, whereas legal positivism holds law and morality to be separate issues.[20] In contrast, legal realists such as Holmes place more emphasis on 'law in action' rather than 'law in books'.[21] Traditionally, it is assumed that judges fit into these three schools of theory. Hence, it can be argued that judges may hold different subjective opinions based on their legal theoretical stance as shown in cases such as *Dudley and Stephens*[22] and Speluncean Explorers.[23] In Speluncean Explorers, Truepenny CJ, a legal positivist, upholds the

[6] Steven Cammiss, 'Law and Narrative: Telling Stories in Court'(2012) 6(1) *Law and Humanities* 130, 134.
[7] Mark Hoecke and Jaakko Husa, *Objectivity in Law and Legal Reasoning* (Hart Publishing 2013) 16.
[8] cf McLeod (n 2) 5.
[9] ibid 3.
[10] Oliver Wendell Holmes, 'The Path of the Law' [1897] 10 Harvard Law Review 461.
[11] cf McLeod (n 2) 11-12.
[12] cf Hoecke and Husa (n 7) 16.
[13] Lady Hale, 'Leadership in the Law: What is a Supreme Court For?'(Lecture at City University, 2008).
[14] Damiano Canale and Giovanni Tuzet, *The Planning Theory of Law: A Critical Reading* (Springer 2012) 195.
[15] *R v West Dorset District Council, ex p Poupard* [1987] 19 HLR 254.
[16] *Bourne (Inspector of Taxes) v Norwich Crematorium Ltd* [1967] 1 All ER 576.
[17] cf McLeod (n 2) 5.
[18] Lon Fuller, 'The Case of the Speluncean Explorers' [1948-1949] 62 Harvard Law Review 616.
[19] Emily Finch and Stefan Fafinski, *Legal Skills* (5th edn, OUP 2015) 247.
[20] ibid 248-249.
[21] cf McLeod (n 2) 4.
[22] *R v Dudley and Stephens* [1884] 14 QBD 273 DC.
[23] cf Fuller (n 19) 616.

conviction in the case, whereas Foster J - taking a natural law stance - asserts that the conviction should be set aside and reversed. As such, this suggests that there is never one right answer to legal reasoning.

A question of morality?

The philosophical nature of morality and law within these theories provides a further range of answers to legal reasoning. The Hart-Devlin debate provides the idea that there will never be one right answer in deciding whether the law requires morality or not. Patrick Devlin argues that common morality must be protected as, 'without it no society can exist',[24] whereas Herbert Hart disagrees with the idea of common morality and prefers instead the idea of a 'number of mutually tolerant moralities',[25] which would protect those who engage in immoral activities. In *Gillick*,[26] for example, there were conflicting arguments as to whether doctors should be able to give contraceptive advice or treatment to under 16-year-olds without parental consent. On the one hand, teenage pregnancies would increase if parental consent were necessary; on the other hand, the courts would be encouraging underage sex if parental consent was not necessary.[27] Accordingly, there does not appear to be one correct answer to legal reasoning. Instead, there are different interpretations of cases in which questions of morals, ethics and law are considered.

In cases such as *Nicklinson*[28] and *Conjoined Twins*,[29] the questions of morality, ethics and law to very sensitive cases are conflicting. In *Nicklinson*, for example - a right to die case - there were a range of opinions including nine judgements at the Supreme Court. Although the court's verdict was to refuse to help Mr Nicklinson die, no perfect conclusion could be reached.[30] What is crucial here is that judges have to consider a whole range of arguments in which morals and ethics are taken into account. This idea is further supported in *Conjoined Twins*, which concerned two conjoined twins and whether it was better to permit both twins to die, or to kill one to save the life of the other. Judges do not take just one argument into consideration, but conversely examine a range of subjective opinions before reaching a verdict. Cases such as *Dudley and Stephens*[31] reveal the extent to which there are presented questions of morality that determine the outcome of particular scenarios. It can be argued that the different theoretical stances raise a multitude of diverse judgements with questions of morals, ethics and law at the root of them, thus suggesting that an abundance of varied judgements are formed as a result.

Conclusion

Although easy cases can be argued to not hold interpretations and thus may be said to provide one single objective answer, the fact that even clear words have to be interpreted and a judge's views are subjective, sheds light on the fact that there are a range of answers to even so called 'easy' cases. The manipulation of the minor premise demonstrates that facts can be distorted, which not only undermines the truth of the case, but can be interpreted to form different answers and thus indicate that artificially constructed statements of fact may provide a foundation upon which diverse judgements can be laid. Judges tend to hold different values and preferences, which result in a spectrum of varied verdicts to a particular case and in some cases an inarticulate major premise may be formed. The different theoretical nature of law - with three conflicting schools of legal thought - accentuates the idea that judges often hold different views and reach different conclusions. In the case of Speluncean Explorers,[32] Fuller depicts this notion clearly with the varied responses of the Justices. With both the minor and major premises being capable of manipulation and the subjective nature of the judges with their own values and legal thoughts, it can be suggested that legal reasoning is not simple or mechanical. Given this, the possibility of the existence of a 'single' right answer to legal reasoning seems minute.

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