

SW 71 – Metaphysics, Morality, and Interpretation in Dworkin's Justice for Hedgehogs

Chairs: Saulo de Matos and Thomas Bustamante

Schedule for Friday (12.06.2019):

08:30 – 10:30 a. m.

1. **A Dworkinian Response to the Debunking Argument.** Author: Ryo Ogawa (University of Tokyo).
2. **Value or Status? Dworkin and Waldron on metaphysical Foundation of Human Dignity.** Author: Saulo de Matos (Federal University of Pará)
3. **Dworkin reader of Wittgenstein.** Author: Ronaldo Porto Macedo Junior (University of São Paulo).
4. **The One-System View and Dworkin's Anti-Archimedean Eliminativism.** Author: Hillary Nye (University of Alberta).

Coffee Break – 10:30 – 11:00 a. m.

11:00 – 13:30 a. m.

5. **The Failure of Dignity.** Author: Barbara Baum Levenbook (North Carolina State University).
6. **Values, Objectivity and Social Practices: Ronald Dworkin and Joseph Raz on Unity and Incommensurability in Ethics and Morality.** Author: Thomas Bustamante (Federal University of Minas Gerais)
7. **Dworkin's Kantian Constructivism.** Authors: Ana Luísa Navarro (Federal University of Minas Gerais) and Franklin Marques Dutra (Federal University of Minas Gerais).
8. **The objectivity of value and the place of Law in the tree structure: another "acultural" (or "culture-neutral") way of understanding the rise of modernity?** Author: José Manuel Aroso Linhares (University of Coimbra).
9. **Moral disagreement about the mass incarceration in Brazil –responsibility and the search for truth as tools to overcome it.** Author: Emauel de Melo Ferreira (Federal University of Ceará).

1. A Dworkinian Response to the Debunking Argument

Ryo Ogawa
(University of Tokyo)

Abstract: This paper aims to defend value realism from the debunking argument. First, I examine Sharon Street's Evolutionary Debunking Argument (EDB), which proposes dilemma for realist theories of value. By responding to this argument, I suggest a possibility of value realism on the basis of Ronald Dworkin's Integrated Epistemology. Finally, I provide a justification for value realism by the explanationist argument. To do so, I rebut Neil Sinclair's expressivist interpretation. According to Dworkin, "Law is a branch of political morality." Even many legal positivists admit that morality affects the interpretation of law. Philosophers of law thus must take the objectivity of morality seriously. Street's EDB, however, casts doubt on the objectivity of morality. She claims that, because our evaluative belief-formation process is distorted by the evolutionary force, our evaluative beliefs may be unreliable entirely. To avoid this moral skepticism, according to Street, we must abandon value realism. Dworkin pointed out that EDB is based on Causal Dependence hypothesis (CD). CD presumes that only when an evaluative belief is formed by an evaluative fact can we have a sound reason to think that the belief rightly reflects the moral truth. Dworkin denied CD and advocated his new epistemology, Integrated Epistemology. This epistemology tolerates a broadly circular justification, so evaluative beliefs are justified without appealing to evaluative facts. This means that Dworkin's epistemology is immune to EDB. Value realism can be defended on Dworkin's Integrated Epistemology. Dworkin regarded value as "interpretive concept" and constructed his realist theory by appealing to some paradigm cases. This method can be construed as the explanationist argument, which has been employed for moral realism. Sinclair argues that the explanationist argument fails because an expressivist interpretation of our practice is available. I will show that Sinclair's expressivist interpretation cannot fully explain our moral disagreement.

2. Value or Status? Dworkin and Waldron on metaphysical Foundation of Human Dignity.

Saulo de Matos
(Federal University of Pará)

Abstract: The idea of human dignity can be essentially discussed in four different dimensions: origin, foundation, meaning, and application. This study seeks to discuss two possible answers to metaphysical foundation of human dignity through the analysis of two contemporary theories, namely Ronald Dworkin's and Jeremy Waldron's conceptions of human dignity. Dworkin-Waldron debate on human dignity can be regarded as an important instance of the philosophical discussion on the question whether dignity should be considered as an institutional or social status of being dignity, or as a moral value, through which one can determine the content of personal and institutional morality. In "Justice for Hedgehogs", Ronald Dworkin famously argues that human dignity should be seen as the keystone of moral philosophy, and that practical reasoning cannot be adequately developed without a general theory of values. In his book "Dignity, rank, and rights", Jeremy Waldron defends an opposite conception of human dignity, arguing that human dignity should be associated with an institutional status of being dignity related historically to the generalization of some rights and privileges of the *ancien régime*. I will argue that Dworkin's anti-metaphysical approach has important advantages regarding contemporary debates on human dignity.

3. Dworkin reader of Wittgenstein.

Ronaldo Porto Macedo Junior
(University of São Paulo)

Abstract: Wittgenstein is a central figure in contemporary philosophy in general. The influence of his ideas on legal philosophy is usually associated with the manifest impact of the Blue Book and Peter Winch's ideas on H.L.A.Hart major works. Instead of challenging this point, the article claims that an important but diffuse impact of his ideas can also be acknowledged in Ronald Dworkin's ideas, often associated with the continental philosophical tradition of Gadamerian hermeneutics. This essay tries to show how Wittgenstein ideas are at the core of Dworkin's conception of interpretation. Besides it shows how Dennis Patterson's interpretation of this connection is mistaken. He assigns to Dworkin a view that reduces all practices of following a rule to depend on interpretation. However, Dworkin's interpretive view is not committed to such a mistake. Besides, Dworkin's understanding of the common mistakes on deciphering the grammar of law and its connected concepts is deeply Wittgensteinian in style and purpose.

4. The One-System View and Dworkin's Anti-Archimedean Eliminativism.

Hillary Nye
(University of Alberta)

Abstract: In *Justice for Hedgehogs*, Dworkin put forward a view about law that he referred to as the 'one-system view'. On that view, law is a branch of morality, and so all legal questions are really moral questions. Many of his interlocutors saw this as a radical shift. I argue here that it is better seen as a different way of expressing his longstanding view that legal theory is an inherently normative endeavor. Even *Law's Empire* can be read as saying that legal questions *are* all moral questions. They are all questions about the justification of coercive force. When Dworkin gives an account of what the law 'is', he is doing a thoroughly normative project of figuring out what *actual* moral rights flow from our past decisions. I trace this way of thinking about law through Dworkin's career, to show that the one-system view is not new, but rather a distillation of what he always believed.

But even if this is what Dworkin meant all along, is it a plausible position? My second aim is to unpack and reconstruct the argument for the one-system view, in order to provide a defensible reading of it. The argument I make draws on earlier arguments in *Justice for Hedgehogs*. Throughout Part One, Dworkin is concerned to emphasize a Humean point: the separation of fact and value. Fact and value are separate domains, and one cannot ground claims of one sort in the other domain. On this view, the questions of legal philosophy can only be normative or descriptive questions. We can answer questions from within either domain. But what we cannot do is ask which domain law 'properly' belongs in. Many legal philosophers appear to be asking questions about whether law is really a moral phenomenon or not: questions about its ultimate nature, about whether it would be right to place it in the domain of fact or value. Those questions ask us to step outside of a domain and make claims about a phenomenon from some supposed archimedean point. Dworkin has argued against archimedeanism throughout his career. In light of this, I believe Dworkin cannot be understood as making metaphysical claims about the kind of thing law is.

The one-system view, then, is not best understood as a claim that law 'really' belongs in the moral domain, but rather an invitation to join Dworkin in asking fruitful moral questions that can be answered from a normative perspective. In short, for Dworkin, the important and answerable questions begin and end in the domain of morality. Finally, I argue that this one-system approach to legal philosophy, which places law within the moral domain, can be understood as a version of 'eliminativism,' a growing trend in legal philosophy that says that there is no distinctive domain of the legal, or no answerable question about the nature of law. I briefly clarify what eliminativism means, and why it represents a productive way of approaching the questions of legal philosophy.

5. The Failure of Dignity.

Barbara Baum Levenbook
(North Carolina State University)

Abstract: In *Justice for Hedgehogs*, Dworkin claims he is using “the idea of dignity to help identify the content of morality.” (p. 204) In doing so, Dworkin thinks he is illustrating a process, itself based on a theory of moral truth, that explains and justifies moral convictions on the basis of some alleged requirement or demand of self-respect or authenticity, itself arrived at by refining an initially “inchoate” account of dignity in a sort of reflective equilibrium with convictions about the moral duty in question. What saves this process from vicious circularity is that the results about dignity and morality, according to Dworkin, independently appear to be sound.

In this paper, I argue that Dworkin’s dignity framework has little explanatory value for one moral topic for which it should be especially suited: paternalistic intervention by one adult with another. Dworkin’s conception of dignity is too inchoate to illuminate why and when individual paternalism is wrong, all things considered. Dignity does somewhat better at illuminating why some types of individual paternalism are *pro tanto* wrong; but not other types. Moreover, the conception of dignity cannot be refined by the process described above and retain any epistemic value on this matter.

These failures show that dignity isn’t a “conception of living well that can guide our interpretation of [all] moral concepts,” (p. 193) nor is it an idea “reinforce[d]” by and reinforcing all sound ideas about what morality requires. If there is a coherent, holistic unified mutually supporting moral structure governing living well and the treatment of others, as Dworkin claims, dignity is not its master value of living well.

6. Values, Objectivity and Social Practices: Ronald Dworkin and Joseph Raz on Unity and Incommensurability in Ethics and Morality.

Thomas Bustamante
(Federal University of Minas Gerais)

Abstract: Joseph Raz and Ronald Dworkin converge on a central and important aspect of their moral philosophies: they accept the objectivity of the domain of value and provide a non-derivative explanation of the truth of value-propositions. Yet they seem to hold different views about the nature of values. On the one hand, Dworkin advocates an ambitious thesis, known as the unity of value, which seems to suggest that there are no conflicts among values. On the other hand, Raz claims that in spite of the possibility of objective truths in the domain of value, some values and social practices may generate incommensurable reasons for action. Although at first sight these ideas appear irreconcilable, I argue that they are not and that both should be accepted if we follow the road that led Raz and Dworkin to admit value-objectivity while rejecting a non-derivative explanation for truth in the realm of value. This seems to create a dilemma for Dworkin’s account of value and objectivity. I hope, however, that I can get around the dilemma and provide a comprehensive explanation of the unity of value and the incommensurabilities in ethics and morality. Here is my itinerary: At section 1, I explore the general elements of Dworkinian and Razian arguments for the objectivity of value and how each of them bypasses the need for a metaphysical test of truth in this domain. At section 2, I explain Dworkin’s argument for the unity of value and Raz’s argument for incommensurability. At section 3 I explain how Raz and Dworkin see the relation between values and social practices, to show that their views seem to imply the truth of Dworkin’s thesis of the unity of value without dismissing Raz’s account of incommensurability. I argue that this may be the source of an important dilemma. Finally, at section 4, I try to find a way out of the dilemma, hoping to rescue Dworkinian interpretivism from the difficulties created by the dilemma presented at the previous section.

7. Dworkin's Kantian Constructivism.

Ana Luísa Navarro
(Federal University of Minas Gerais)

Franklin Marques Dutra
(Federal University of Minas Gerais)

Abstract: This work wants to present an answer to Ronald Dworkin's rejection of constructivism. Therefore, we propose that indeed constructivism is the best available route if the author wants to avoid moral realism. To do so, we examine the studies of the latter Dworkin on morality in light of his seminal constructive interpretation explained in *Law's Empire* and contrast it with the Kantian version of constructivism proposed by John Rawls. The structure of this paper goes as follows: first, we present Dworkin's specific arguments to refuse constructivism. Then, to defuse these arguments, we characterize Dworkin's own method as a kind of Kantian constructivism. To support this interpretation, we depict Dworkin's ethical liberalism, which can be read, in Rawlsian terms, as a comprehensive liberal view. Then, we notice that Dworkin's ethical liberalism is essentially connected with his views on truth and value, since his *Metaphysical Unity of Value*. That being the case, it seems to us that Kantian constructivism is the best available option for Ronald Dworkin. In a nutshell, Dworkin's main argument against constructivism is that it presupposes the distinction between ethics and meta-ethics: constructivism is stained with the mistaken assumption that there are important philosophical questions about value that are not to be answered with value judgments. In sum, in order to present Dworkin's theory in a coherent way, we want to defend that Kantian constructivism doesn't seem to us neither as a kind of skepticism nor of moral realism. Besides, we state that this view is the most adequate "pigeonhole" for Dworkin's own metaphysical unity of value, due to its conception of moral reasoning and to its commitment with a Kantian conception of person.

8. The objectivity of value and the place of Law in the tree structure: another "acultural" (or "culture-neutral") way of understanding the rise of modernity?

José Manuel Aroso Linhares
(University of Coimbra).

Abstract: What does it mean considering the "place of Law" from the perspective of a *freestanding integrated conceptual interpretation* and the *postcolonial conception of truth* it allows (and which unveils truth itself as an *interpretive concept*)? Does this "location" unavoidably entail an *a-culturally* conceived *claim to universality* (justifying liberal *societas* as a definitive stage)? Is this culturally-neutral identification of modern or Enlightenment acquisitions —reducing Law's resources (and the corresponding narrative of continuity) to one of its major cycles— compatible with the defense of interpretivism, i.e. with a *point of departure* which involves a *conceptual interpretation* of the signifier Law and a *point of arrival* which clarifies that the determination of *juridically relevant truth-conditions* is or should be inseparable from a *doctrinal concept* of Law? These are the main questions which the present paper endeavors to reconstitute, alluding less to the «integrated scheme of value» developed by Dworkin in the first two parts of *Justice for Hedgehogs* (exploring the mutually supportive coherence concerning the claims to truth about *living well* and *being good*) than to the «place» which, from the perspective of this scheme (and the *a-problematic claim to universality* which protects it... and which projects it in action) Law and legal thinking (if we want, Jurisprudence) are expected to occupy. To reconstitute this "place" is certainly treating *Justice for Hedgehogs* as a kind of a clarifying and amplifying re-exposition (if not "supplement"), whose *novum* consecrates and reinvents the previous paths (namely those which were trodden in *Law's Empire* and *Justice in Robes*)... and this means at least exploring two main axes, both of them highlighting a negative dialogue with Hart's legacy (and the *foundational conventionalism* which this one generates): a methodological one, concerned with the rejection of the *discretion thesis* and the corresponding *hard cases theory*, which inscribes the experience of *law as interpretation* in the domain of interpretation in general and characterizing it as *collaborative interpretation* (whilst exploring the affinities and differences which relate juridical discourses with interpretive practices sharing the same genre or purpose); a legal theoretical and/or legal philosophical

one (strengthened through the dialogue with Coleman's pickwickian positivism and the refusal of a *conventionalist incorporation of principles*), which explores the connections between *legality* and *morality* whilst introducing significantly novel resources, the most remarkable one being certainly the defense, against his previous answer, of a *one-system view* —implying the dynamics of a *tree structure* and the treatment of Law as a *branch of political morality*, as well as the troubling distinctions involving *personal moral rights*, *political (legislative) rights* and *legal rights*. The essay is an opportunity to explore systematically these challenges, whilst sustaining the opponent view of a cultural-civilizationally conformed (*non-universal*) experience of Law.

9. Moral disagreement about the mass incarceration in Brazil –responsibility and the search for truth as tools to overcome it.

Emauel de Melo Ferreira
(Federal University of Ceará)

Abstract: Brazil faces a deep problem concerning the mass incarceration in its penitentiary system, leading to several forms of violence inside and outside the prisons. This state of affairs is wrong, because the fundamental rights of the prisoners have been violated. However, certain groups within Brazilian society, judiciary branch, prosecution office and even the government, simply denies, against all the facts, that this state of affairs is wrong: the President Jair Bolsonaro, for instance, defends legal changes like the end of custody hearings, which, ultimately, will increase the mass incarceration. To these people, therefore, the mass incarceration is a good thing: they like to see the violence in the prisons, the riots and the assassination of prisoners, because they think that a good criminal is a dead one. It seems that President Jair Bolsonaro and his followers are internal skeptics on this matter, because he does not deny morality in an error or a status way, like the external view: he, on the other hand, uses more general assumptions, reaching to moral conclusions as well. How can the irresponsibility of the agents who holds that moral position be justified? This paper aims to answer that question, analyzing, specially, the second part of Dworkin's Justice for Hedgehogs, when he points out his concerns on truth and responsibility. The hypotheses that will be tested states that: if someone does not even try to achieve truth, he is being irresponsible. The paper will defend that it is possible to achieve the truth in law against, for instance, the internal and external skepticism, as described in the first part of the book.