



RESEARCH PAPER

Hermeneutics and Constraint in Law: Reassessing the Interpretative Limits in Dennis Patterson's Jurisprudential Framework

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ABSTRACT

The aim of this study is to explore Dennis Patterson's understanding about Interpretation in Law and assess whether interpretation is inherently fundamental to legal practice, or merely a method employed in a situation in which there is a lack of clarity. Differently, he treats interpretation as a secondary technique and supports his view through examples of important cases such as *Riggs v. Palmer* and *C & J Fertilizer v. Allied Mutual Insurance Co.*, while discussing textual, doctrinal, historical, and structural arguments. The research in hands aims to provide a qualitative and analytical study of Patterson's jurisprudence, including a comparative analysis of important interpretive principles. The study shows that, although, Patterson recognizes the importance of interpretation in understanding the meaning of a text, yet he does not see it as fundamental. Resultantly, Patterson's framework is consistent with traditional interpretive principles, therefore, his framework can only be incorporated with them and not others.

KEYWORDS Interpretation, Law, Dennis Patterson, Legal Hermeneutics, Forms of Legal Argument

Introduction

Dennis Patterson (2006) is famous for his hermeneutical research works and philosophy like Dworkin on the Semantics of Legal and Political Concepts (Patterson, 2006), Wittgenstein on Understanding and Interpretation (Comments on the work of Thomas Morawetz) (Patterson, 2006), Normativity and Objectivity in Law (Patterson, 2001), Interpretation in Law- Toward a Reconstruction of the Current Debate (Patterson, 1984), The Poverty of Interpretive Universalism: Toward the Reconstruction of Legal Theory (Patterson, 1993), Authorial Intent and Hermeneutics (Patterson, 1989) and also his work i.e. Interpretation in Law (Patterson, 1989). In his work, Interpretation in Law, Patterson (1989) has highlighted the techniques of arguments together with contending that interpretation is not the firmament of law and a kind of activity which is parasitic in nature thereby denying its foundational nature as asserted by Ronald Dworkin (1978, 1986) and others. Although, there is a debate about whether interpretation is key to legal practice but Dennis Patterson, in his book Interpretation in Law (1989), suggests that it is not necessary to interpret legal texts to understand them. According to his understanding, interpretation is necessary only in cases of ambiguity. Patterson's other books, such as Normativity and Objectivity in Law (2001) and Authorial Intent and Hermeneutics (1989), also confirm his point of view that interpretation follows understanding of the law. He believes that legal practitioners make greater use of methods of argument than interpretation. Patterson (1984) identifies six main types of arguments in law: textual arguments, doctrinal arguments, historical arguments, prudential arguments, structural arguments, and ethical arguments. He also believes that interpretation is of less importance and value than these arguments. Interestingly, Ronald Dworkin disagrees and provides a different perspective on interpretation. According to Ronald Dworkin (1986) in his book *Law's Empire*, interpretation of understanding is necessary in the understanding of law because it has moral aspects. Further, in his book *Taking Rights Seriously* (1978), Dworkin discusses hard

cases in which interpretation is necessary to find the main principles of the legal system. According to him, interpretation is how the law becomes consistent and morally justified, unlike Patterson. Stanley Fish (1989) disagrees with Patterson in his argument that understanding is always interpretive. According to him, interpretation provides meaning to something, and understanding and interpretation are close concepts. Patterson's argument is different from that of Dworkin and Stanley's arguments. The importance of standard ways of interpretation of laws is also emphasized. While analyzing and assessing this debate, this research aims to provide a qualitative and analytical study of Patterson's jurisprudence, including a comparative analysis of important interpretive principles. The study shows that, although, Patterson recognizes the importance of interpretation in understanding the meaning of a text, yet he does not see it as fundamental. Resultantly, Patterson's framework is consistent with traditional interpretive principles, therefore, his framework can only be incorporated with traditional interpretive principles, particularly in difficult cases.

Literature Review

A very famous scholar Hunter (2005) talks of various interpretation techniques, such as the interpretation of the text, the purpose, or the structure, and the interpretation techniques that are applied by judges in unclear cases. The traditional rules, such as the plain meaning rule, are important techniques employed in legal reasoning. Patterson's ideas, such as minimal change, consistency, and generalization, seem to reflect legal principles, and therefore, Patterson's work is not really an innovation. There are many case laws those indicate that interpretation is very important. In the case of *Riggs v. Palmer* (1889), the court relied upon the moral code that it is not right for a person to gain from something that is wrong, rather than the law itself. In the case of *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.* (1975), the court relied upon the history and intent of the agreement, rather than the words themselves, in the form of the reasonable expectations principle. Hence, interpretation is a complex role in the discussion of law. Patterson (1989) views interpretation as a narrow and situational role, whereas the majority of the scholars, such as Fish (1989) and Dworkin (1986), believe that interpretation is a primary role in the understanding of law. The way in which the rules of interpretation, the way in which the law thinks, and the way in which the judge decides cases all come together indicates that interpretation is both basic and essential.

Methodology

In this work, different approaches are used to study the understanding of Dennis Patterson, especially his work "Interpretation in Law" (1989). It is ensured through analyzing, comparing, and studying cases to identify the most important ways of interpretation. The main sources of information in this study are Patterson's (1989) article and his other works (Patterson, 1984, 1989, 1993, 2001, 2006, 2006). Other sources of information include expert opinions (Hunter, 2005), various other articles about interpretation, and different cases. This study has three parts. First, it involves analyzing Patterson's main ideas, such as his claim that interpretation is not a basic concept, and studying them in detail. Next, it involves comparing Patterson's ideas with those of other authors, like Ronald Dworkin (1978, 1986) and Stanley Fish (1989), and general rules for interpreting laws. Finally, it involves analyzing some of the most important cases Patterson has mentioned, like *Riggs v. Palmer* (1889) and *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.* (1975), to understand how interpretation is applied in real-life cases. This is done to fully understand Patterson's ideas and whether his ideas about the difference between understanding and interpretation are in line with other legal views.

Patterson's Jurisprudential Framework

Patterson (1989) commences with the explanation of interpretation, its nature, characteristics and position which it occupies in legal matters. He describes the role of

interpretation as an important one but denying giving it status so as to make it a pillar of legal practice. He declares interpretation as parasitic, because it is not independent; rather, it is totally dependent upon what is already being place, meaning thereby that there are certain forms of legal arguments (as he says), by the utilization of which the legal practitioners resolve the misunderstandings of law on point. On one hands, he vehemently criticizes Stanley Fish (1989) and Ronald Dworkin (1986) for holding the view that understanding in law is basically a matter of interpretation conversely, his contention is that interpretation presupposes understanding; it is not necessary to interpret each and every legal event to grasp the meaning of it, therefore, understanding and interpretation of it are two diverse and different things in as much as for understanding a thing or effect of a legal event we do not and never have to (at all times) indulge into the process of thinking and engaging our minds. He continues that it is only when the understanding fails or becomes complex or give us different dimensions which may be true or false, than the role of interpretation starts so as to reach a smooth and clear conclusion. He contends that in cases of diversity of opinions or when clash in the understanding arises, to make better explanation and knowing the accurate understanding of law on issue could be done by mastering certain techniques; he names those techniques as legal arguments.

In his work, he emphasizes time and again that understanding law in times of obscurity is dependent and directly attached with the utilization of certain arguments which in his view are the principles of interpretation. These principles or legal arguments are used by law practitioners in order to find out the truthfulness or falsity of legal assertions or claims. These forms of arguments occupy pivotal role in unfolding or making the state of affairs clear as to legal propositions which are being contested. He refers mainly to American legal system for describing different forms and kinds of legal argumentative tools which are six in numbers. The list (if we mention the exact words) “comprise a complete list of the argumentative tools of American Law” (Patterson, 1989).

These are as follows: textual, doctrinal, historical/intentional, prudential, structural, ethical.

In order to substantiate his take, he gives an example: here goes an assertion or claim to the effect that “*A contract is unenforceable between parties of whom A being 15 years of age and B (mature enough to enter into a contract).*”

He states that the courts analyze this claim by evaluating it through the balance of one of the above mentioned principles in order to reach to a just conclusion. Suppose that the assertion is based on the legal argument that the party A is a minor & as such cannot enter into a contract according to “Restatement (Second) of Contracts” (1981) & various other doctrinal evidences which describes the capacity of parties to enter a contract. Now if nothing is shown to the contrary, the court shall dispose off the issue by following literal argument by declaring that the contract is unenforceable due to the condition of minority of one of its parties as mentioned in the text of the statute. Thereby, he tries to establish that by utilizing textual as well as doctrinal arguments the court may reach the conclusion disposing off the suit.

Inversely, a situation may arise where these forms of arguments go in clash and contradict each other. Upon this, what would be the proper course of action which might be taken form the subject matter of discussion. Should one argument be given preference over the other or should one repeals the other by having more strength in terms of legal sanctity and the practices of courts in its frequently being used or should the legal community or practitioners must find a way towards conciliation and coherence of the use of these arguments for resolving the dispute. At this point, Patterson (1989) develops a very interesting and striking theory of its own by devising the vocabulary of minimal mutilation, coherence & generality & put forth certain examples from the leading case laws together

with how the judges have interpreted the laws and in what manner did they act when they performed interpretation.

He mentions a statutory interpretation case to strengthen his take. *Riggs v. Palmer* (1889), a famous case in which a will was executed by grandfather in favor of his grandson. Later on when the grandfather (Palmer) married with a women, the grandson (Riggs) fearing the expected change in the will killed his own grandfather in lust for the full acquisition of the property. The law (textual argument) was very clear on the situation. According to New York Statute of Wills, the property should have to be devolved to Riggs but this (textual) argument was qualified by another very important doctrinal maxim of common law which was that, "no one shall profit from his own wrong" (*Riggs v. Palmer*, 1889). Thereby the judges clarified the status of law in the issue through interpreting the text of the statute subjecting it to the doctrinal argument thereby barring the devolution of property. As Patterson (1989) completes this notion, he asserts that the judge's decision was encapsulating of the interpretative techniques as he set forth i.e. minimal mutilation (the judges did not damage the law, rather they clarified it), coherence (that the process of deducting the conclusion was consistent with what they knew about law of wills) and generality (that the judges final opinion is in line with the arguments available in doctrinal scholarship and other departments of laws when it comes to will and probates).

Moving to the other example from an insurance case, *C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.* (1975), in which an insured building was burglarized and looted by the thieves leaving no signs of use of force, equipment or chemicals for the purposes of opening the entrance of the building. The insurance company was refusing to compensate & execute the insurance policy on the grounds of a provision mentioned in the contract. The provision while defining burglary specifically put forth that only entering a building by the use of force and violence and to the effect visible marks made by tools, explosives, electricity, chemicals as a necessary ingredient for constituting burglary (*C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*, 1975).

According to the described facts, the loss was not covered by the insurance policy but the court decided otherwise. Patterson (1989) says that the reason of the court for doing so is a lesson in the art of interpretation. While the dissenting opinion was based of textual argument emphasizing on the importance of adhering to the writing as for as the contracts are concerned the majority opinion never bothered to take into account the textual argument, instead it based its opinion by re-coursing to historical argument.

The court states two things: i) when the circumstances in which the contract was made changes, it requires the need to understand the provisions of the contract in accordance with the changed circumstances; ii) now a days insurance policies are presented to the purchasers in standard forms i.e. take it or leave it, leaving behind no room for negotiations culminating to the boilerplate nature of contract therefore the consents of the clients remain susceptible & ambiguous which comes under reasonable expectation doctrine (*C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*, 1975). By adopting this approach of interpretation, the court actually acted in accordance with the features of minimal mutilation & coherence (Patterson, 1989) by establishing that reasonable expectation is part and parcel of insurance law and generality by referring number of citations from other departments of law to support their take (*C & J Fertilizer, Inc. v. Allied Mutual Insurance Co.*, 1975). Patterson (1989) concludes himself by reasserting the productivity & vitality of forms of arguments. He contends that the need for interpretation arises when the form of arguments conflict with each other because the form of arguments does not highlight the way to go to in case of a conflict among themselves, therefore interpretation helps in resolving the issue, as he contends, although interpretation is essential but not foundational aspect legal scholarship. It is useful and purposive because it helps complete the meaning of law when needed (Patterson, 1989).

Jurisprudential Appraisal

There is no denying the fact that the law of interpretation is an indispensable feature of any legal system or the upholding of rule of law and democracy (Finn, 2006). It is embedded so deeply in the understanding of legal anomalies that without it the meaning of law itself remains incomplete.

Even a cursory reading of Patterson's work depicts that apart from severe disagreement upon considering interpretation as a firmament of law, he explicitly and frequently throughout his work has not only accepted interpretation as an exercise for reaching towards clear picture and finding the truth but also asserted that interpretation completes the meaning of law itself. He has endorsed the degree of importance which interpretation occupies in the course of legal exercises. Patterson's take on the subject could be contested on account of the following major key points:

Arguments take of Patterson is no innovation; an old wine in the new glass

The theory (Patterson, 1989) tries to establish using the phrases *minimal mutilation*, *coherence*, & *generality* is not new to the law of interpretations. These phrases actually are the new enhanced terms for the old accepted and acknowledged principles of law of interpretation. There are dozens of the principles which the courts take into account and use for the purpose of finding out the real meaning of the law to resolve any legal anomaly. For instance, the plain meaning rule (Hunter, 2005), object interpretation, purpose and intent interpretation rule (Hunter, 2005), the rule of *Ejusdem generis* (of the same kind or nature), the rule of *Pari materia* (upon the same matter or like the subject), the rule of *Noscitur a sociis* (a word is known by the company it keeps), the rule of *Charming Betsy*, the rule of lenity, the rule of avoiding absurdity, grammatical interpretation rule, and structural interpretation (coherence), etc.

Interpretation is Understanding

This work categorically opposes the conceptual framework of Patterson when he says that "understanding is not interpretation." rather strongly emphasizes on saying that understanding and interpretation cannot be put apart from one other. In fact, for interpretation of any legal anomaly, a good understanding of law is a must. A good understanding of law coupled with proper reasoning is an unavoidable step towards interpretation.

The Six is Not Fix

It is an accepted practice of the courts wherein the courts besides looking into textual, structural, doctrinal and other fixed interpretative tools also look and consider heavily on the reasoning, values and principles (non-originals theory) for the purpose of interpretation of legal anomaly because though rare but there are certain situations, as Dworkin (1978) uses the term "hard cases" in his legend treatise *Taking Rights Seriously*, where the court might not be able to find a solution in the primitive old techniques/argumentative tools. Therefore, it opposes the assertion of Patterson (1989) that there are only six fixed argumentative tools utilized by the Judiciary for the purpose of understanding the meaning of law.

Conclusion

Interpretation in Law (Patterson, 1989) is a work focused on highlighting the importance of techniques and methods which courts or legal practitioners employ while interpreting the anomalies of law. While the work raises the difference between understanding the law and its interpretation besides denying its fundamental position in legal setup, thereby, it acknowledges the importance and role of interpretation to be of vital for the smooth running of legal system.

Recommendations

The techniques Patterson (1989) refers to are minimal mutilation, consistency, and generalization. Therefore, these can be considered an extension of other techniques, such as interpreting absurdity. Patterson's rigid division between understanding and interpretation is not well developed in legal studies. Lawyers should consider interpretation as an extension of understanding, especially when dealing with hard cases or conflicting laws. Moral codes, policies, and values not found in the text are often considered by judges, particularly in complex cases (Dworkin, 1986). Courts and scholars should not limit their approach to Patterson's six techniques of argument; hence a more expansive approach to interpretation is recommended. Interestingly, Patterson's techniques are based on American law, but applying them in other legal systems can provide a broader perspective on interpretation. Lastly, his view on universal interpretation could be enhanced through engagement with other scholars.

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