

- WHAT OF THESE VALUES MEAN WAS LOST IN CHANGE MEANING OF HIS LAW
- 1 BELIEVED / ABSTRACT RULES / NOT CASES MANIPULATED
 - 2 TENDING TO MAKE LAWS / FROM SCIENCE / GAVE IN SPECIFIC NAME
 - 3 CONTEXTUAL APPROACH / REFERS TO SOCIAL, ECONOMIC & POLITICAL CIRCUMSTANCES / THEY WANTED / JUDGES TO TAKE INTO ACC.
 - 4 LEGAL INDETERMINACY / FOR THEM / FOR EVERY RULE OR PRINCIPLE / THERE WAS SOME LOOSE / CONTRA
 ↳ PEDESTAL RULE, THESE NUMBER UNITS
 - 5 ANSWERS TO LEGAL ISSUES / DID NOT COME FROM / FROM CONVENTIONAL RULES
 - 6 JUDGES
 - ↳ IF RECOGNISED ^{THEY CAN} PARADIGM OF CHANGE / THEY WERE / TO RECONCILE SOCIAL REALITIES & NEEDS / AT THE TIME / THUS THEY
 - ↳ MUST CONCENTRATE ON SOCIAL INTERESTS / AND THEMSELVES / OR POSITIVIST CONSERVATISM (SCIENTIFIC APP. TO LAWS & SOCIAL SCIENCES)
 - ↳ MUST REALISE / THEY WERE MAKING POLICIES / IN SAME WAY / AS LEGISLATORS DID
 - 7 THIS REALISATION / ENABLED JUDGES / TO MAKE SOME POLICY CHOICES
 - 8 PROGRESSIVES / TRIED TO BASE REALISM / IN MODERN SOCIAL SCIENCE (THAT WE SEE, HERE A FEEL IS OBJECTIVELY REAL (ARISTOTLE))
 - 9 WAS WIDELY ACCEPTED & BECAME OFFICIAL VERSION / OF REALISM
 - 10 REALIST SHOWED / JUDGES ^{DO MAKE LAWS} / WHEN INTERPRETING LEGISLATION
 - 11 PRINCE CASE (P.27 -> NOTES)
- ↳ MEANING OF HIS RULES

LATE MODERN LEGAL PHILOSOPHIES (3)

CHARACTERISTICS

LATE MODERN THINKERS

- * TRIES AGAINST RATIONALISM / BY ADDING / HE ALSO NEED TO HAVE RATIONAL VALUES / AND ALL THINKING
- REALISING / UNLESS HE PUT VALUES & PRINCIPLES OF JUSTICE / BACK INTO TECHNICAL WORLD / IT COULD BECOME FRAGMENTED & DESTROY ITS CREATORS
- SUCH VALUES / MUST BE RATIONAL & ANALYSED AT / VIA RATIONAL METHODS (USING REASONS)

LATE MODERN THINKING

- DON'T REJECT INDIVIDUALISM (PERSON, PURSUING INDEPENDENT THOUGHTS)
- * TEMPERED INDIVIDUALISM / BY INCLUDING COMMUNITARIANISM / THINKS THAT A PERSON / MUST (TOGETHER) DELIBERATE / RATIONALLY & COLLECTIVE ABOUT VALUES
- SO, INSTEAD OF A DECIDING FOR HIMSELF / WHAT'S RIGHT OR WRONG / HE'LL DO IT WITH OTHERS / COLLECTIVELY

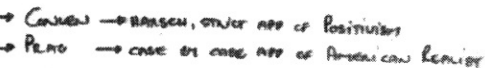
LATE MODERN PHILOSOPHERS

- WANT REJECTED SCIENTIFIC WORLDVIEW
- * THEY NO LONGER LOOK FOR THE / CORRECT METHOD / IN ABSOLUTE TRUTH & METAPHYSICAL IDEAS / BUT IN ¹ DECISIONS; ² ANALOGY; ³ PRECEDENT
- THEY DEVELOP CONCEPTUAL & NARRATIVE ARGUMENTS / EXPLAINING HOW SUBJECTIVITY / CAN BE LIMITED / IN LEGAL DECISIONS
- SO, THEY REJECT / TRADITIONAL RATIONAL ARGUMENTS / THAT EXPLAIN JUDICIAL ACTIVITIES

SPECIFIC PHILOSOPHIES (DWORKIN & RAWLS)

RONALD DWORKIN (THEORY OF ADJUDICATION)

- * FOCUSES ON WAYS / JUDGES DECIDE NEW CASES / VIA CONSTRUCTIVELY INTERPRETING / EXISTING LEGAL MATERIAL (ADJUDICATION PROCESS)
- ADJUDICATION / IS AN INTERPRETIVE PROCESS
- WHICH CAN BE DONE RATIONALLY (RATIONAL VALUES)



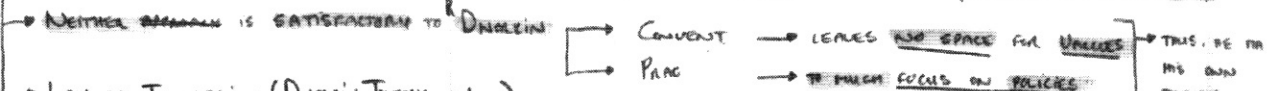
WHAT IS HE REACTING AGAINST (UNSETTLING EFFECT / OF LEGAL THINKING / IN ADJUDICATION!)

REALIST PROBLEM / IF THE STATE / LEGAL DECISIONS / AREN'T BASED ON RATIONAL ARGUMENTS / WHAT OTHER JUDGES FROM MAKEING DECISIONS IN A WAY THAT THEY WANT → ~~ARE CHANGING THEM~~ & CONSTRAINS

PRESENTS 3 OPTIONS / IN UNDERSTANDING LEGAL INSTITUTIONS (DWORKIN'S PURPOSES OF ADJUDICATION)

- ① LAW OF CONVENTIONALISM (RATHER LAW & LEGALITY PRINCIPLE = CENTRAL VALUES)
- 1. REFERS TO POSITIVISM
 - 2. IDEA / A FUNDAMENTAL PURPOSE / OF ALL LEGAL PRACTISES / IS TO SERVE PEOPLE, BUT BE CAREFUL TO CIRCUMSTANCES WHERE / EXECUTIVE POWER IS USED / AGAINST THEM → FAIR CONSIDERATION
 - 3. ENABLES THEM / TO PURSUE / AN INTEREST / IN BENEFICIAL WAY
 - 4. DEPLOYMENT OF STATE POWER / JUSTIFIED / BY COMPLIANCE / WITH PREVIOUSLY ANNOUNCED LAWS
 - 5. RULE OF LAW & LEGALITY PRINCIPLE / IS CENTRAL VALUE

- ② PRAGMATISM (RULE OF LAW & LEGALITY = ABSENT)
- 1. (USED BY) REFERS TO AMERICAN REALIST
 - 2. IDEA / A FUNDAMENTAL PURPOSE / OF ALL LEGAL PRACTISE / IS TO BRING ABOUT / CERTAIN SOCIAL CONSEQUENCES
 - 3. POLICIES ARE CENTRAL
 - 4. DEPLOYMENT OF STATE POWER / JUSTIFIED / BY GOOD CONSEQUENCES BRUGHT ABOUT / DUE TO ITS DEPLOYMENT



③ LAW AS INTEGRITY (DWORKIN THEORY OF LAW)

- 1. PEOPLE ACT WITH INT / IF ACT ON BASIS / OF AN ¹ CONSTITUTIONAL ² PRINCIPLES
- 2. POLITICAL COMMUNITY ACT WITH INT / IF PURE PRINCIPLES / ISSUE POLICY IMPLEMENTATIONS (OR ³ INTERESTS)
- 3. COURTS / MUST ACT / IN "FAITHFUL PRINCIPLES"
- 4. LAW IS A "CONSTRUCTIVE INTERPRETATION" / OF A COMMUNITY'S SHARED PRINCIPLES
- 5. HE TRIES TO ADDRESS PROBLEMS / THAT A REALIST POINTED OUT (PROB)
- 6. THIS THOUGHT / JUDGES MUST USE OTHER SOURCE / IN DECIDING CASES

→ WALDIN STATES / ARGUES TO MORE WITH JUST / DIFFERENTIAL VALUES
 → AS LAWS / NORMS CONSISTING OF ¹ RULES / ² PRINCIPLES / ³ VALUES
 → IN HARD CASES / JUDGES HAVE ¹ DISCRETION TO GO BEYOND RULES & ² CONSIDER OTHER LEGAL MATERIAL

- CONSTRUCTIVE INTERPRETATION (CI)** = ¹ ASSOCIATION IS OBJECTIVE = DWORKIN'S ANSWER, IS CI
- ① → JUDGES DECIDE NEW CASES / OR CONSTRUCTIVELY INTERPRETING / EXISTING LEGAL MATERIAL (EX LEGISLATION)
 - ② → SAYS THEY "GO WITH THE FLOW" OF LAWS & THAT ¹ NOT SINGLE JUDGMENT / ² CHANCE LAW DIRECTION

→ RIVER METAPHOR / RIVER FLOWS / WHEREVER YOU STAND
 → JUDGES / DECIDE ACCORDING TO FLOW / OF THE LAW
 → I JUDGE / CAN'T CHANGE THE COURSE / OF THE "RIVER" (LAW)

SUMMARY OF MBEAC
 - ③ → SAYS MOST CASES / BEFORE LAW / IS EASY
 - ~~WE HUMAN~~ ¹ HAVE 2 RULES TO BE APPLIED / A JUDGE APPLIES
 - ~~WHEN~~ ¹ MORE THAN 2 RULES / JUDGES DECIDE / WHICH 1 FIT THE CASE
 - NOW → ² DECIDING / WHICH 1 / ³ MAKE MOST SENSE / WHICH IS ¹ DETERMINED / BY ² REASONING / OF / THE ³ PRINCIPLES
 - ④ → TRADITIONS, IN LEGAL SYSTEMS
 - RULES / SUPPORTED BY PRINCIPLES / HAVE MOST WEIGHT
 - TRADITIONS / → A LEGAL SYSTEM / INDICATES PRINCIPLES / OF A LEGAL SYSTEM
 - JUDGES / DECIDE A CASE / BASED ON TRADITIONS / FIND NORMS IN CASE LAW
 - * → CI MEANS / READING AUTHORITY LEGAL SOURCES / IN WAYS / MAKING IT THE BEST / IT CAN BE

→ DWORKIN A CONSTITUTIONAL COURT
 → HIS THEORY ENJOYS POPULARITY IN CON COURTS & USED BY → MORGAN J, SACHS J, MCCLEATH J
 → WHAT IS LAW, WHY DO WE HAVE LAW, HOW MUST SOCIETY BE STRUCTURED

→ JOHN RAWLS = FREEDOM OF CONTRACT & EQUALITY (INVESTIGATING) → DWORKIN
 → DEALS WITH SAME ISSUE AS DWORKIN (ALSO A CRITIC OF POSITIVISM & UTILITARIANISM)

- 1** → TRIES TO CHALLENGE / VALUES ARE NEEDED / OF CONSTRUCTING JUDGES / IN DECISION MAKING (VALUES, HAVE RATIONAL BASIS)
- 2** → DID SO / IN CONTEXT OF MODERN SOCIAL WELFARE STATE (20TH CENTURY)
- ATTEMPT TO COMBINE LIBERALISM / CAPITALISM / WITH SOCIALISM (L → C → S)
 → TRIES TO SOFTEN HARSH CAPITALISM EFFECT / BY INCLUDING ASPECTS OF SOCIAL WELFARE (GAS GIVING ECO RES)
 → EX THE COW CASE / TO ESTABLISH A SOCIETY / BASED ON DEMO VALUES & HUMAN RIGHTS
 → HE TRIES TO RECONCILE / VALUES OF SOCIO-ECO EQUALITY / WITH TRADITIONAL LIBERAL VALUES / OF LIBERTY
- AGREES / ITS IMPORTANT FOR PEOPLE TO HAVE FREEDOM / TO PURSUE PERSONAL INTERESTS / OF THE "GOOD LIFE"
 → LIBERALS POINT / THE FREEDOM ISN'T ABSOLUTE / BUT SUBJECT TO LIMITATIONS
 → EX THE RIGHT OF OTHERS / CAN'T BE VIOLATED / BY PURSUIT OF "GOOD LIFE"

→ APPROX TO ECONOMIC VALUES OF SOCIO-ECO EQUALITY
 → SOCIAL WELFARE STATE

③ FREEDOM
 ④ DEFENDS
 ③ PROCESS

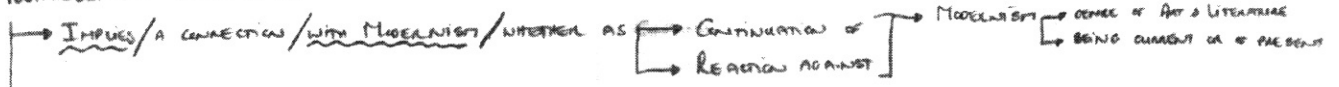
→ DEFENDS / ESSENTIAL IDEAS TO WELFARE LIBERALISM / AS
 → ESSENTIAL PERSON WOULD / SUBJECT PURSUIT / OF GOOD LIFE / SUBJECT TO CERTAIN "UNIVERSAL JUSTICE PRINCIPLES"
 → ~~IT IS~~ / IT MUST BE TO ECONOMIC BENEFIT / OF LEAST ADVANTAGED

- PROCESS OF RATIONAL DELIBERATION (JUSTICE AS FAIRNESS) ENJOINING ALL / STARTS / FROM THE SAME PLACE**
- ① → RATIONAL PERSON / ¹ ONLY INTERESTED IN ADVANCING OWN INTEREST / ² BECAUSE NEED TO CO-OPERATE WITH OTHERS
 - BUT / BECAUSE SCARCITY / GIVES RISE TO CONFLICT OF INTEREST
 - FOR CO-OPERATION TO BE STABLE / HUMAN BEINGS NEEDS TO SHARE / COMMON POINT OF VIEW
 - WOULD BE RATIONAL FOR GROUP (FORCED TOGETHER BY NATURE) TO ENTER INTO SOCIAL CONTRACT / WHICH
 - THE SOCIAL CONTRACT / ESTABLISHES PRINCIPLES OF JUSTICE / AS BASIS / FOR CO-OPERATIVE NATURE
 - GROUP / MUST RATIONALLY DECIDE / WHO I CAN DO / WHAT COLLUSION / AMONGST THEM / AS JUST AGREES / & SUCH
 - ② → FROM THE IDEA / RAWLS THEORY / GETS THE TITLE "JUSTICE AS FAIRNESS"
 - AGREEMENT TERMS (PRINCIPLES OF JUSTICE) IS ¹ RATIONAL / ² BINDING / ONLY IF / FREELY REACHED
 - FAIRNESS / REFERS TO PROCESS BY WHICH ITS PRINCIPLES / WERE ESTABLISHED
 - BUT / WOULD BE IMPOSSIBLE TO DO / NEED CONSENT FROM ALL IN SOCIETY (MAXIMIN STRATEGY)

→ APPROX WITH TRADITIONAL ARGUMENTS, ON WHAT MAKES SOCIAL JUST JUST
 → TRIES TO ESTABLISH A "PERSONAL SET" OF SOCIAL JUSTICE, IN SOCIAL CONTRACT

POST MODERN LEGAL PHILOSOPHIES LW

↳ POSTMODERNISM (WHAT IS IT)



DISTINGUISH BETWEEN

- 1 → MODERNIZATION → CHANGES IN TECHNOLOGY / MADE DIFFERENT WAY OF BEING / POSSIBLE
 LINKED TO RENAISSANCE & ENLIGHTENMENT / BUT WITH EMPHASIS ON INDUSTRIALIZATION; URBANIZATION, CAPITALISM
 R → RETURN TO CLASSICAL ART & LITERATURE
 E → AN INTELLECTUAL MODO M. ATTITUDE
 SPEAKS OF TECHNOLOGY & IDEOLOGICAL CHANGES (THINKING OF GUNS & NATIONS) IUC

- 2 → MODERNITY → IMPULSES / CHANGE IN SOCIAL STRUCTURE / RESULT OF MODERNIZATION
 PERIOD BETWEEN 1870 - 1970

- 3 → MODERNISM → APPRECIATION OF MODERNITY BEAUTY (AESTHETIC)
 ARTISTIC MOVEMENTS (LATE 19th - 20th CENTURY)

DISTINGUISH BETWEEN

- 1 → POSTMODERNITY → RELATING TO POSTMODERNISM (BELOW)
 HISTORICAL PERIOD / CHARLES JENCKS DESCRIBES AS "STARTING AT EXACTLY 3:22 PM / 15 JULY 1972"
- 2 → POSTMODERNISM → GENRE OF ART; LITERATURE, ARCHITECTURE / IN REACTION AGAINST / ESTABLISHED MODERNISM PRINCIPLES & PRACTICES
 REACTS TO STYLES IN ART, ARCHITECTURE, LITERATURE & MUSIC (CHARACTERISTIC OF POSTMODERNITY ABOVE)
- 3 → POSTMODERN → RELATING TO POSTMODERNISM
 POINT OF RUPTURE / IN EPISTEMOLOGY / MOSTLY ARTICULATED BY JEAN-FRANCOIS LYOTARD
 THEORY OF KNOWLEDGE

FREDERIC JAMESON

- MOST INFLUENTIAL POSTMODERN PHILOSOPHER
- IDENTIFIED POSTMODERNISM / AS AGE / WHERE CAPITALISM / PASSED THROUGH (PERMANENT) / EVERY ASPECT OF LIFE
- IT HAS 2 DRIVERS
 - INDUSTRIALIZATION / OF 3rd WORLD AGRICULTURE
 - REFOCUSING ON / 1st WORLD ECONOMIES
- POSTMODERNISM HAS / 6 SYMPTOMS OF CHARACTERISTICS
 - NAMING OF AFFECT (DETERMINED) → HIS TERM FOR / SHALLOUNESS OF POSTMODERN ART
 - HISTORICAL SUSPENSE → HIS TERM FOR / TECHNOLOGY / EXHAUSTING HUMAN ABILITIES
 - GEOPOLITICAL AESTHETIC → REGARDING TO / INTER RELATIONS BETWEEN STATES
 - MUTATIONS IN GUEST SPACE → PEOPLE OCCUPY
 - POST-TITLICK → REMAINDER OF MIXED STYLE / OF HIS ART (LOOK OF NY, IMPRESSION, PREVIOUS WORK)

POSTMODERN EPISTEMOLOGY (THEORY OF KNOWLEDGE)

- LYOTARD NAMES / SOCIETY USES 2 DISCOURSE KINDS (GRAND NARRATIVES = COMPLICATIONS) = N + S
- 1 → NARRATIVE DISCOURSE
 - INCLUDES STORIES TOLD IN CULTURES / ACCEPTED AS ITS TOLD / THIS IS SELF LEGITIMISING
- 2 → SCIENTIFIC DISCOURSE
 - NEED LEGITIMACY / FROM OUTSIDE
 - IF CLAIMS GOD CREATED EARTH / MUST PROVE IT NOT / EMPIRICAL MEANS (COMES FROM EXPERIMENT, NOT THEORY) → EXPERIMENTAL MEANS
 - DEPENDS ON
 - POLITICAL D → HISTORY / EVENTS / HUMANITY PROGRESS
 - PHILOSOPHICAL D → POSSIBILITY OF / ABSOLUTE PROOF
- LYOTARD CALLS THESE "GRAND NARRATIVES"
- 3 → PRESENT / POST MODERN PEOPLE / DON'T BELIEVE IN GNS / DUE TO WORLD WARS / AS SCIENCE DOESN'T PRODUCE FREEDOM OR PROGRESS
- RESULT / WHERE
 - MODERN ERA / BELIEVED IN 2 STORIES (NARRATIVE) / THROUGH FREEDOM & PROGRESS VIA SCIENCE
 - POST MODERNIST / SEES VARIABLES // 1 / EQUALLY VALID STORIES (NARRATIVE), THIS
 - ALL CULTURE / IS FILLED WITH MANY MICRO NARRATIVES / NOT DEPENDANT ON GNS / TO LEGITIMIZE IT, WHICH