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Intricacies of Statutory Interpretation Intertwined with the Role and Approaches of Judges

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ABSTRACT

Interpretation of Statues has a broad connotation and an enriching history deeply rooted in the common law tradition. The essence of the principles of interpretation, on one hand seeks to entrust discretion to the judges to widen meaning to the immediate textual problem by tailoring in the legislative primacy. However, on the other hand, the principles seemingly restrain the judiciary from encroaching on the legislative field despite the several legislative discrepancies.

The central theme of the paper is "Interpretation of statues with critical analysis of the role and approaches of judges" entails the study of two popularized theories of Purposivism and Textualism with their contrasting features. The author further attempts to cover the four methods of interpretation by Benjamin Cardoza whilst incorporating a conscious and subconscious element. The author also aims to present the boundaries of Judiciary and legislative by proving their interdependence on one another.

Keywords: *Interpretation of Statues, purposivism, Benjamin Cardozo, realism.*

I. INTRODUCTION: A HISTORICAL RUN-THROUGH

The act of resolving conflicting legal disputes by courts runs parallel to the phrase from the case Marbur v. Madison,[2] "say what the law is" whether it maybe a court interpreting positive law, as a regulation and statues or common law arriving from a prior judicial precedent descending from the body of law. Common-law tradition for formulating laws was traditionally by the methods of judicial opinions and by incorporating the "principle of equity, natural justice and public policy." But in statutory disputes, courts often do not apply this principle or a reasonable course of action to determine cases. Alternatively, the courts are compelled to "figure out the underlying meaning of statue" and apply the statutory law to determine the dispute. The primary view of statutory interpretation by a judge is the essence of "legislative supremacy" and the judicial power of the courts vested in the "power to pronounce the law as

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[2] Marbur v. Madison 5 U.S. 137 (1803).

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the Government enacts it." Several schools of legal thought revolutionized the statutory interpretation of law influencing the development of theories that dominates the modern legal theory but no longer holds a preponderating view.

(A) Awakening of Legal Realism

Prior to the rise of Legal Realism, judges relied on the belief of the general principles of law. As legal realism gained prominence in the early 20th century[3] these assumptions were scrutinized and asked to self-consciously justify the legitimacy of their ruling. New insights from the fields of psychology and sociology were incorporated by early legal realists to judicial decision making as a way to discover how the law really operates. Legal realism resulted in establishing that judges rarely "discover" law but mostly "make it" and this led to widespread acknowledgement that there were no "pre-established truths of universal and inflexibly validity"[4] and there exists no right or accurate way of reading cases. Consequently, an obligation arose to justify the law in any announced case.

(B) Legal Realism leading to Modern Jurisprudence

Justice Frankfurter explicitly stated, "*In a democracy the legislative impulse and its expression should come from those popularly chosen to legislate and equipped to devise policy as courts are not*".[5] Determining the intent or the actual sense behind the rules would be preferred over mere discovering the fundamental principles of law by the judges. To do otherwise would invariably usurp the legislative function while implementing policy. Currently, it's widely accepted for judges not to prioritize own policy views over codified policy by the legislature. This bridges the view of modern textualism and purposivism theories, which would we explained further with detailed analysis.

Nonetheless, not many legal judges and schools inculcated the notion of legislative supremacy in statutory interpretation but the school of thought that grants judge the power of interpretation through constitution and claims that constitutional duty of interpretation necessitates the duty to shape the law. William Eskridge claims that detaching statutory interpretation from statutory enactment to uphold the "*that statues will evolve because the perspective of the interpreter will be different from that of the legislator*."[6] Accordingly Justice Richard Posner stated that "intuitions" or "preconceived notion" must be considered with the approach of practical

[3] John Wills, *Statute Interpretation in a Nutshell*, 16 CAN BAR REV, 1 (1938).
[4] Edwin W. Patterson, *Cardozo's Philosophy of Law*, 88 UPENN 71-91 (1939).
[5] Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417 (1899).
[6] John Copeland Nagle, *Review: Newt Gingrich, Dynamic Statutory Interpretation,* 143 U. PA. L. REV 6, 2209-2250 (1995).

consequences of the decisions.

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II. THEORETICAL UNDERPINNINGS

The concept of purposivism and textualism are the sub-central theme of this study. John P Figura (2010, pg. 9) [9] theories have a pervasive value. Purposivism reflects a twentieth century narrative and textualism was predominated in nineteenth century as preferable version of plain meaning of interpretation. The study focuses on textualists as a historical higher ground inclined towards conservative, conventional choice and purposivists resulting in a recent and relatively radical stance.

Joel K. Goldstein (2018, pg. 89)[10] states the literal meaning of the translation cannot expect the legislature to put an end to Judicial interpretation because the legislature benefits from the same

[7] *Statutory Interpretation: Theories, Tool and Trends, India*, EVERYCRSREPORT.COM (Apr. 5, 2018, 11:45 PM), https://www.everycrsreport.com/reports/R45153.html.
[8] William H. Loyd, *The Equity of a Statute*, 58 U.PA. L. REV 76,77 (1908).
[9] John P. Figura, *A Mostly Purposivist Century: Theories of Constitutional Interpretation in the 1800s*,38 *SSRN* 4 (2009).
[10] NAGLE, *supra* note 6.

in some way or another. Bruhl and Leib[11] elucidates about the judicial role of interpretation from the perspective of "Separation of Powers" with the branches of the government. The state that Judiciary is not to interfere in the work of Legislation cause of the role to differentiate division of labor as stated under the domain of constitutional text. The comparative institutional analysis points out that the Legislative bodies have competencies and resources for better law-making, while the judicial bodies have expertise and education that facilitate better legal analysis and application of rules to individual cases.

III. MAJOR JUDICIAL APPROACHES TO INTERPRETING STATUES

Currently, the two prominent theories of judicial approaches or commonly known as statutory interpretation are purposivism and textualism. Both of these theories share the same endeavor of interpreting statues. The goal is essentially respecting the legislative supremacy in relation with the Constitution and interpreting statues. The intent which grounds the legislature to pass the given statute is generally oblivious with regard to the distinct situation put forth before the court. Consequently, textualists and purposivists strive to structure this objective intent; they mitigate different views, modes and tools of interpretation and determining the objective intent.

This contrasting view is due to the institutional competence, the term "institutional competence" is expertise branch of the government that not just formulate the most feasible policy but also decides which other institutes should interrelate.[12] We proceed to analysis and delve into the methods of judicial approach

(A) Purposivism – as a tool of purposive act

Purposivists incline towards believing that legislation is a medium of purposive act and judges must interpret statues to execute this legislative purpose with an eye of serving justice. According to the mid twentieth century purposivists Henry Hart and Albert Sacks,[13] a judge in the process of judicial approach must:

1. Determine the rationale and purpose behind the statue and this subordinate provision.
2. In order to carry out the purpose of statue, interpret the words of the statues and must not entail –
    a) a narrative which they do not bear
    b) a meaning violating the any terms of a established policy

[11] Aaron-Andrew P. Bruhl and Ethan J. Leib, *Elected Judges and Statutory Interpretation*, 79 UCLR, 1215-1283 (2012).
[12] *supra* at 7.
[13] HENRY M. HART JR & ALBERT M. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW, WESTBURY: FOUNDATION PRESS, (10t ed. 1958).

Hart and Sacks strongly believed in constitutional interpretation and not confining to the inquiry of the text but also exploring the conceptual principles as the democracy, equality, liberty, etc. and chiefly serving the purpose, standard and structure of the constitutional document.

(B) The New Textualism

As for Professor Eskridge, textualism evolved in 1980s as a response to/ against the purposivist judges. Textualists claim purposivism as an element which renders judges to adapt their individual policy with the textual provisions. They seemingly tend to undermine the nature of law and enhance the power of unaccountable and unelected judges. Textualist dismisses the crucial principles of the purposivists, the constitutional intent.[14] They claim that determining the actual intent is an unfeasible approach of mind reading and beyond the competence of judges. Law making bodies must be perceived collectively with different approaches rather than single discreet intent. As for the constitutional problem, using the method of intent blatantly violates the bicameral legislature and the glory the other articles.

Textualists comply with the Eskridge rule[15] of not going beyond the crux of the text when textual meaning is bound to be detailed and comprehendible. Purposivists are true to rule of reaching towards the extra textual source for interpreting. They also concern themselves with other statutes, dictionaries and precedents, while textualist limiting themselves to the general understandings with less dependency on judicial discretion, more fidelity and predictable results.

Textualism is regarded as the new and refined version of the old interpretation, linking the 19th century school of thought to modern textualism by numerous textualist one among them being John Marshall, father of American Jurisprudence. In the case of United Stated v. Holy Trinity[16] we witness the nothing of purposivism as comparably young. As Justice Scalia claims that purposivism was popularized in 1940s and 1950s in the era of Hart and Sacks. Jonathan Molot puts it across as "textualism has been so successful in altering the views of even non adherents" we can safely assume that "we have all become textualists" towards the end.

IV. BENJAMIN CARDOZO'S FOUR METHODS OF INTERPRETATIONS

Benjamin Cardozo's method of interpretation, judicial process and theories of law are primarily

[14] Arthur L. Corbin, *The Judicial Process Revisited*, 71 *YALE* 195-196 (1961).
[15] Grant Gilmore, *The Age of American Law*, 78 SSRN 75- 8 (1997).
[16] United Stated v. Holy Trinity, 143 U.S 457 (1892).
Schacter, *Metademocracy: The Changing Structure of Legitimacy in Statutory Interpretation*, 105 HARV, 593, 593-94 (1995).

pertained to his notion of judicial functionality. The scope of his juristic theory essentially entails separation of power into judicial, executive and legislative branches which is the fundamental crux of this research paper. These methods render to its functionality only after extracting the underlying principle from precedents, the ratio decidendi and the judges must also establish the path which the principle develops.[17] Consequently, these methods significantly aim at creating the right rules, rather than determining particular case. These are the following methods:

(A) Method of Logic

The method of logic is substantially the method of certainty; it upholds factors such as impartiality, stability, uniformity, and adherence to precedent. The method sustains and conserves the symmetry of the legal framework. Furthermore, this often results in discrepancy with justice as to the analogical derivation from precedents. For instance, Cardozo presents that doctrine of equitable conversion, the risk of loss with the consequence is placed on a real property of vendee prior to him gaining title or possession.[18] Consequently, the method of logic does not always pave into certainty, as occasionally there is conflicting conclusions where the justice predominates the choice. The likelihood of reducing the scope of precedent with the method of logic or extending it beyond the limits adds in the element of flexibility.

The method of logic to Cardozo was claimed to have the possibility of establishing an unequivocal interpretation or the inference from precedents of the case to draw out rules. This was a complex working rule for judges and for the counselor too, as when the first method is applied to any case it paints a picture of applicability and not ghastly at the instance of application to the case.

(B) Method of History

The method of history is relatively easier to comprehend than the other methods. The judges are to acknowledge that from historical process arises some of doctrines and conceptions, and one must accept them with endurance if not mere belief. For instance, the law of real property states "*No law giver meditating a code of laws conceived the system of feudal tenures*."[19] Method of history elucidates to judges that ancient factor in a laws are not essentially outdated; they prevail to hold a prominent value as a means of accomplishing social adjustment. Titles to the lands could be readily guaranteed by title insurance companies if judges were liberal in

[17] Edwin W. Patterson, *Cardozo's Philosophy of Law*, 2 NDP 445 (1939).
[18] Benjamin Cardozo, *A Ministry of Justice*, 35 HARV.L. REV 113 (1921).
[19] Osborne v. Bank of United States, 738 U.S 899 (1824).

altering the rules of conveyance backed with the sentiments of justice. Secondly, Cardozo failed to comprise in the method of history that kind of discovery for the historical origins of legal rules by which Professor Wigmore has flattened some of the amplified doctrines of law of evidence.

(C) Method of Custom or Tradition

The method of custom or tradition in use is more restricted than usual. Cardozo makes an intermittent link to mercantile customs; he claims that creating new laws is extremely prominent in its application of archaic rules and as a negotiable mechanism. Further what he means to convey is that courts whilst making new rules do not admit proof of mercantile customs as its basis. According to Benjamin Cardozo the standard of care can be attained by regular practice of humanity that can influence court and jury. The assumptions which bridge the method of tradition along with method of sociology is the general assumption of inherent and spontaneous matter throughout law mending the limits of wrong and right. This method of attributing tradition or customs in judicial process lacks adequacy. Modification to customs or habits of the community give rises to new content to the legal institutions. Ehrlich used the term "*living law"*[20] which becomes distinct and new meanings are taken over by legal doctrines.

The judicial process, as perceived by Cardozo, we witness him being preoccupied with the legal rule even though with very little concern to the legal rules.[21] Yet again we notice that his treatment of relations between custom and law is incoherent, he tends to avert from the Blackstonian origination of customs,[22] which credits the initial origins of customary law to prehistoric custom and then subsequently continues to subsume the specialized customs of courts and lawyer under the overall subheading of "customs". Cardozo was distressed about live traditions and the collective customs of the community. The method of custom is a method of transformation and adapting and not the method of idolizing archaic or primordial customs, similar to Savigny.[23]

(D) Method of Justice

The fourth method of judicial process is also known as the method of sociology, this method is a subdivision from the other three methods. The first three methods of judicial process were conferred as routine methods, but the method of justice renders mechanism to arising conflicts

[20] Benjamin N. Cardozo, *The Nature of Judicial Process*, 16 YALE L.J. 180 (1921).
[21] GILMORE, *supra note* 15.
[22]Ruggero J. Aldisert, *The Nature of the Judicial Process*, 49 *U. CIN. L* 1-5 (1989).
[23] Paul Brickner, *How Judges Think*, 59 *W. RES* 795-797 (2009).

or to uncover loopholes. Cardozo did not accept or desired to be perceived by bar and bench as he believed that the freedom of decision in some cases is upon the appellate judges. Decisions and pronouncement by the judges are predominately determined by first three methods of judicial process, "*this predetermination is as by the canons of art and not due to any compulsion subjected by inexorable material causation, nor by the fear of committing an impeachable offence***."** They frequently adhere with the first three methods. The sense of consistency and logic carries eminent social value than establishing a new doctrine which encompasses the sight of justice, with having binding similarities with the first and fourth method.

The method of justice or sociology lacks the possibility of a logical determination of substantiated rules which guides the court towards justice as to the inadequacy this method fails the compatibility with the other three methods and with the sense of inferiority and subordinate to the other methods. The method of sociology is used on the last resort on basis if the application of the other methods results in a frightful consequence henceforth acts as an appeal to "equity" in Aristotelian sense.[24] It is teleological, acts as an arbiter when in conflict of other methods, aims for social welfare and helps legal doctrine justify their existence as suitable to end.

Cardozo recognized the ambiguity of this end, particularly when presented with the test of constitutionality he would embrace the ambiguous aspect rather than the rigidity which arbitrarily categorizes legislation and induced mistrust of the courts. The method of justice is best fitted in the domain of constitutional law, bridging the conventional claims of liberty and contrasting necessities of social legislation. The consequence and the need for a particular legislation can be enlightened to the court by social facts; he states that the fuller information had a greater influence in the case of People v. Williams,[25] which forbidden working during night for women. He consequently utilized the social data for a similar purpose and Social Security Act of 1935, which based the concept of destitution and old age.[26]

The method of sociology renders an apt summarization of the process. We can see the collateral link between judicial process and sociology in the doctrine of trade repression and labor union. However, Cardozo further explained the method's applicability in private law, his discussion meanders from sociology in a standard sense and makes the method of justice or sociology as a domain for social values, where the judges consider the incorporating social values of judicial

[24] GILMORE, *supra* note 15.
[25] People v. Williams, 7 Cal. App. 103 (1907).
[26] Jerome Frank, *Cardozo and the Upper Court Myth*, 13 Law & Contemp 399-325 (1948).

process. Several places in Cardozo's writing, often one tends to squabble with his terminology on one side and on the other side are perplexed by his meticulous diffuseness, however one can lastly determine his attempts and endeavors of the work.

V. CRITICAL ANALYSIS OF THE METHODS

The analysis of the four methods of judicial process is essentially differentiating between conscious and sub consciousness. The notion of conscious entails the judge serving justice through logic; prior precedents and consideration, overlapping the analysis of the judge and precedents owning to logic and discussion on "principle works" towards turning into "authorities" and lastly justifies the rationale of "policy".[27] Sub conscious would be accustoming to sociology, traditions and customs, most of garnered form between the lines of opinion and extracting verses autobiography of judicial pronouncements. The prominent factor is accumulating different points from different prospects of careers on different topics from a single judge at any given time. *"Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge".*[28]

However, the subject is neither completely exhausted throughout this work nor adequate to portray an individual variation as flaw in the judicial system. Cardozo's work also presents the subconscious element prevails as a matter of fact and is a significant element for the development of the society. But why did it not gain importance in law? [29]We notice that the subconscious process upholds consciousness. For instance, asphalt chewer is necessity in preparation of asphalt Kulture was not fully aware the process but knew when the concoction reached the right consistency by biting. Therefore, a judge who emphasis on public policy or morals is more or less unconsciously incorporating sociology and ethic to cases. Cardozo through his methods of judicial process is taken over by intuitions of accessibility is too inconspicuous to even be structured, too unpredictable to be localized and too imponderable to be esteemed. However, we should perceive among the elements of the judge this use of civilization around him does affect the issues of law.

Benjamin Cardoza work continues to be a profound contribution to the study of judicial process. Lawyers must, certainly, consistently be apprehensive of the judicial process and to structure their arguments accordingly. Its scientific study, nonetheless, the development we anticipate cannot bring about the new understanding immediately, but reformation would

[27] GILMORE, *supra* note 24 at 11.
[28] Southern Pacific Co. v. Jensen, 244 U.S. 205. (1917).
[29] Marbur v. Madison, 5 US 137 (1803).

consequently affect the teaching and practice of law. [30]

VI. SOCIAL COMMENTARY ON CARDOZO'S WORK

Frangois Geny called *"judicial process as a method of independent decision or liberew recherché scientifigue"*.[31] The process is considered as a work of art and science; judges extract the underlying principle from precedents and statues and develop the principle. The application of principle to the case is regarded as art and the extracting the underlying principle is the application of science. Cardozo's work comprised of both the factors and always perceived judicial process as a method. Regarding the origin and development, judicial process was inclined towards radically structural than contextual excluding the fundamental of moral or natural law.[32]

Cardozo truly believed in associating judicial process with high moral ground, rendering decisions in an objective sense without any trace of personal and not implying the judge losing all the power of the court. The four methods of interpretation is balanced by judicial process serving the predominating social interests and securing the social welfare.

Social welfare is measure by one's own set of values making the canons of justice and morality secondary aspect.

Cardozo strongly differs with the positivists, who restrain themselves with their own set of values in the absence of legislature. Judicial process while interpreting statues is "so must of morality as the though end practice shall conceive to be appropriately invested with a legal sanction, and thereby marked off from morality in general." Henceforth, Cardozo translating moral norm to mere jural norm is the concept of judicial process. [33]

The close working of legislature and judiciary was what Cardozo aspired at the beginning of his career; he advocated and endorsed the plan that coordinated both branches of the government. He claimed that when a rule has been outlined it must be applicable in numerous instances despite the effectiveness is curtailed. Accordingly, the court must decide to relate to the lawmaking body, when a case is categorized in the domain of statutory provision.

VII. RECOMMENDATIONS & CONCLUSION

In the process of interpretation of statutes, even if a judge is a proclaimed legislator the ideals

[30] Ruggero J. Aldisert, *The Nature of the Judicial Process*, 49 *U. CIN. L* 1- 5 (1989).
[31] Harold J. Laski, *Judicial Review of Social Policy*, 39 *HARV* 865-865 (1926).
[32] Irving Lehman, *Judge Cardozo in the Courts of Appeals*, 39 *COLUM. L REV* 14-16 (1939).
[33] William Charles Cunningham, *Cardozo's Philosophy of Law: His Concept of Judicial Process*, *LUC* 41-45 (1960).

of law must go through a crucial change. A new perceptive must be incorporated where greater prominence is given a judge's decision, opinions rather than the judges itself and the results it entails.

My contentions in this research paper are that courts must not constraint themselves or just select one of the provided methods, court must ground on an overall view, inculcate all the vital factors which results in a balanced conclusion. The basic rule of interpretation must put forth this truth. Cardozo's precisely examined and analyzed ways to formulate and support the four methods of interpretation needs a hint of societal growth and stability. Cardozo by enduring the judicial legislation resolved the conflicts as an obligatory and inevitable part of judicial process. Nonetheless his work must rightly claim the mores of society as an essential factor to meet societal needs.

The theories of textualism and purposivism methods of judicial approach need the ounce of reality. Judicial opinions must not be reduced to mere collection of personal policy preferences. Decisions must be justified with reasons; resulting decision must be prioritized over than mere opinions. One out of three judicial decisions lack the intent of law instead of creating a new law. However, Cardozo's work largely reflected the finding and applying existing law and not "law" as a testament to the notion of rules, but "law" with regard to the rules and principles establishes the rationale behind the purpose of ordering human affair.

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