

Does Dworkin prove that semantic theories are unable to account for the cases he describes?

The Snail Darter Case

1. Construction of a dam was stopped due to the Endangered Species Act
ESA said the government can take "such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species"
2. Lawyers for the state argued that the ESA only dealt with starting construction and that Congress had enacted several statutes favoring the continuation of the project even after the snail darter population was found
3. Chief Justice Burger wrote that the Court had no right to refuse to apply a clear law just because the results are "silly"
4. Justice Powell dissented arguing that the Court should take common sense into account when the issue isn't clear
5. The problem for Dworkin is that Powell's decision essentially relies on morality to allow the construction. While the majority relied on purely legal and not moral grounds, semantic theorists can easily argue that the disagreement was over morality in that the dissenters wanted to rely on morality and the majority on the law

The McLoughlin Case

1. Mrs. McLoughlin's husband and 4 children were in an accident, she heard and went to the hospital where she saw the injuries and deaths, and later sued for emotional damage
2. Initial judge ruled that the precedent didn't apply because the injury wasn't reasonably foreseeable, Appeal court affirmed ruling for "policy" reasons, and the House of Lords reversed due to policy being insufficient, while 2 Lords argued that the moral principles of earlier decisions must apply.
3. The problem here for Dworkin is that a semantic theorist could argue that the law itself is clear.
 1. The judges all agreed on the law, the initial judge differed from the others in a factual sense over the issue of whether it was foreseeable
 2. The Appellate judge used morality from policy considerations
 3. The majority of the House of Lords only disagreed with the initial judge on foreseeability, not the grounds of the law.
 4. The 2 Lords explicitly used morality, thus not challenging the legal aspects.

The Brown Case

1. Overturned segregation by arguing that segregation is inherently unequal
2. This is clearly not a disagreement over the grounds of the law, merely over the factual claim of the equality of segregate institutions
3. Dworkin's main argument is that the disagreements over whether "equal protection" banned segregation were based on the grounds of the law.
4. However, once again the argument could be made that decisions stopping segregation were based on morality or factual differences