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# The Concept of Ronald Dworkin's Legal Philosophy as an Alternative to Positivism and Natural Law Theory

**Dissertation Summary**

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## Content

## I. General description

This research is devoted to the philosophy of law by Ronald Miles Dworkin (1931–2013), a representative of the Anglo-American branch of this discipline. This discipline is identified in the Western academy with such concepts as "jurisprudence", "theory of law" (or "legal theory") “analytical philosophy of law”. Analytical jurisprudence is also often called as Anglo-American philosophy of law, but we should make some clarifications regarding to this term. First, at an early stage of development, analytical jurisprudence should be considered as English since it originates in the British tradition (works of Jeremy Bentham and John Austin[1]). Secondly, the geography of modern analytical philosophy of law also extends to some English-speaking countries of the Commonwealth of Nations including New Zealand and Australia.

The school of analytical jurisprudence, whose founder is John Austin, was built on the foundations of legal positivism. Its main goal was to distinguish law from the sphere of politics, morality, and history. The forerunner of the analytical philosophy of law, Jeremy Bentham, criticized the archaic lectures of his teacher Sir William Blackstone on natural law, condemned the contextual analysis of legal concepts and the manipulation of legal concepts carried out by the British Parliament, based on the history of law.

After John Austin's “Lectures on Jurisprudence”[2] was posthumously published, analytical jurisprudence for a long time (until the middle of the 20th century) could not boast of outstanding ideas and resonant publications. However, with the advent of the philosopher and jurist Herbert Hart at Oxford, the analytical philosophy of law received a “new beginning”. During the triumph of positivism (mostly thanks to Hart), there was also an increase in anti-positivist sentiment among legal scholars, which was dictated by the bitter experience of the Second World War and the crimes against humanity

[1] Bentham J. A fragment on government: the new authoritative edition. Cambridge: Cambridge University Press, 1988; Austin J. Province of jurisprudence determined. London: J. Murray, 1832; Austin J. Lectures on jurisprudence, or The philosophy of positive law. London: J. Murray, 1885.
[2] Austin J. Lectures on jurisprudence, or The philosophy of positive law. London: J. Murray, 1885.

committed by Nazi Germany (positivists were accused of unquestioningly following the unjust law). Legal positivism was opposed by representatives of the natural law school Lon Fuller and John Finnis, as well as their supporters.

Philosopher and jurist Ronald Dworkin stood out from the rest critics of legal positivism and Hart's theory. His legal philosophy literally grew out of criticism of Hart's theory and his magnum opus "The Concept of Law"[3]. Criticizing Hart's theory of law from the beginning in the form of fragmentary essays[4], Dworkin gradually developed his ideas into an independent legal concept, which came to be called "interpretative", "constructive interpretation", or "law as integrity". Since first Dworkin's publications, the legal positivists, and Hart in particular, found a new enemy who criticized their theory in a completely different way than the natural law theorists. Thus, his concept was called, by Australian philosopher John Mackie, "the third theory" which occupies a middle position between two dominant schools of law (on that moment): legal positivism and the theory of natural law[5]. However, not everyone shared this approach: many legal scholars found in his Dworkin's theory features of natural law, legal realism, and legal positivism.

Ronald Dworkin ranks third on the list of the most cited legal scholars of all time[6] (besides American legal theorists Richard Posner and Cass Sunstein). Dworkin is also recognized as multidisciplinary philosopher of law who has focused his research on current US debates about freedom and equality, freedom of speech and religion. According to legal scholar David Luban: "He [Dworkin] is, if anything, further proof that our legal solar system revolves around native suns, and it is closely keyed to the various revolutions in U.S. history rather than the problems Hart investigated" [7]. The research focuses on multidisciplinarity,

[3] Hart H.L.A. The Concept of Law. Oxford: Oxford University Press, 1961.
[4] These essays were later published in the collection of articles: Dworkin R. Taking Rights Seriously. Cambridge: Harvard University Press, 1978.
[5] Mackie J. The Third Theory of Law // Philosophy & Public Affairs, 1977. Vol. 7. No. 1. PP. 3–16.
[6] Shapiro F. The Most-Cited Legal Scholars Revisited // The University of Chicago Law Review. Vol. 88. No. 7. Special Issue: Most-Cited Legal Scholars, 2021.
[7] Luban D. Time-Mindedness and Jurisprudence // Virginia Law Review. Vol.101. No.4, 2015. P. 908.

which will help to fully reveal the content of his theory. By “multidisciplinarity” is meant that Dworkin analyzes problems by using the categories of political philosophy (liberalism, democracy), moral philosophy, ethics (unity of value, ethical-legal dilemmas) and hermeneutics (interpretation and author's intention). Dworkin's philosophy of law is considered as part of his general philosophical views. It is also important to take into account Dworkin's holistic approach to the analysis of law, political morality and ethics.

There is no consensus in the Anglo-American philosophy of law on which legal school Dworkin's theory should be attributed to. By analyzing the context and criteria of the basic schools with which Dworkin's philosophy of law is associated, as well as by examining the content of his legal theory, it will be possible to find answers to the questions: can Dworkin be considered a natural law theorist? Can he be called a legal realist, and are there any similarities between Dworkin's theory and legal positivism? Thus, the purpose of the study is to demonstrate that the concept of R. Dworkin's philosophy of law is an alternative to both legal positivism and the theory of natural law, and legal realism.

**The Extent of Prior Investigation of the Topic**

The philosophy of law of Ronald Dworkin is already well-known for the Anglo-American world of analytical philosophy of law and for academy societies of many European countries: Spain, Germany, the Netherlands, France. Anglo-American philosophy of law is also of interest to researchers from Brazil, Poland, and Serbia.

Articles[8], research[9], conferences[10], as well as handbooks and collection of essays[11] are devoted to Dworkin 's philosophy of law. It is also worth

[8] Pannick D. A Note on Dworkin and Precedent // The Modern Law Review. Vol. 43. No. 1, 1980; Smith. S Right Answers and Realism: Ronald Dworkin’s Theory of Integrity as a Successor to Realism // The Northern Ireland legal quarterly. Vol. 64. No. 4, 2013; Kronman A. Precedent and Tradition // YALE Law Journal / The Yale Law Journal Company Inc., 1990; Barton T. Liberalism and Theories of Adjudication // Boston College Review. Vol. 28. Issue 4. No. 4, 1987; Green M.S. Dworkin v. The Philosophers: A Review Essay on Justice in Robes // University of Illinois law review. Vol. 5, 2007; Jolls C. Dworkin’s «Living Well and the Well-Being Revolution // Boston University Law Review / School of Law Boston University. Vol. 90, 2010;

highlighting several papers about Dworkin and his research: a collection containing critical articles and Dworkin's response to them “Dworkin and his critics: with replies by Dworkin”[12], third edition of the book of the British lawyer and jurist Steven Guest “Ronald Dworkin”[13] published in 2012. A book published in the same year edited by American legal philosopher Scott Hershowitz “Exploring Law's Empire: the jurisprudence of Ronald Dworkin” [14], collection edited by Canadian law professor Arthur Ripstein “Ronald Dworkin”[15], and a collection “The Legacy of Ronald Dworkin”[16] edited by legal philosophers Wil Waluchow and Stefan Schiaraffa.

Regarding Russian academy the analytical philosophy of law was mentioned in works by domestic researchers, including the jurist Nikolai Korkunov in his work “Lectures on the General Theory of Law”[17]. Gabriel Shershenevich also wrote about the analytical philosophy of law in his work “The General Theory of Law” [18]. Contemporary researcher of the Russian philosophy of law Vyacheslav Zhukov also points out that this area of research in law is called the analytical philosophy of law or legal positivism, which is characterized by the traditions of analytical philosophy[19]. The Anglo-American

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Dyzenhaus D. Dworkin and Unjust Law // The Legacy of Ronald Dworkin / ed. by Waluchow W., Sciaraffa S. New York: Oxford University Press, 2016.

[9] Peczenik A. Rights as principles of adjudication - Ronald Dworkin´s model of principles as a legal interpretation device applied to the problem of self-incrimination in Community competition law procedures, Presented in partial fulfillment of the requirements for the degree of Master, University of Lund, 2001; Hunter T. Interpretive theories: Dworkin Sunstein, and Ely // Bond Law Review. Vol.17. Issue 2. Article 5, 2005. P. 24.

[10] Conference for the Colloquium honors Ronald Dworkin, 2017: http://www.law.nyu.edu/news/conference-for-the-colloquium-ronald-dworkin-legal-political-social-philosophy The Legacy of Ronald Dworkin, New York, 2015:http://www.law.nyu.edu/global/globalopportunities/nyulawabroad/buenosaires/conference2015, Conference on Ronald Dworkin’s Justice for Hedgehogs, Boston, 2009**:** http://www.bu.edu/law/events/upcoming/dworkinconferenceschedule.html.

[11] Wacks R. Philosophy of Law: A Very Short Introduction. New York: Oxford University Press. Inc., 2006.

[12] Burley J. Dworkin and his critics: with replies by Dworkin. Hoboken (N.J.): Wiley Online Library; Malden (Mass.): Wiley-Blackwell, 2007.

[13] Guest S. Ronald Dworkin. Stanford, CA: Stanford University Press, 2020.

[14] Exploring Law's Empire: the jurisprudence of Ronald Dworkin / ed.by Hershovitz S. Oxford, U.K. Oxford University Press, 2012.

[15] Ripstein A. Ronald Dworkin. Cambridge: Cambridge University Press, 2007.

[16] The legacy of Ronald Dworkin / ed. by Waluchow W., Sciaraffa S. New York: Oxford University Press, 2016.

[17] Korkunov N.M. Lectures on the General Theory of Law [Lektsii po obshchei teorii prava]. Saint Petersburg: Yuridicheskii tsentr, 2004.

[18] Shershenevich G.F. The General Theory of Law [Obshchaya teoriya prava]. Moscow: Izdanie brat'ev Bashmakovykh, 1910.

[19] Zhukov V. N. Philosophy of law: A Handbook for Universities [Filosofiya prava: uchebnik dlya vuzov]. Moscow: Mir filosofii, Algoritm, 2019. P. 44.

theory/philosophy of law is also mentioned in professor Nersesyants' handbook "Philosophy of Law", in which one section is devoted to “Hart's Neopositivist Concept of Law” [20]. Nersesyants identifies it as part of the analytical jurisprudence, dating back to the writings of John Austin and Jeremy Bentham.

Nevertheless, the analytical, or Anglo-American, philosophy of law did not arouse much interest among domestic jurists and did not interest philosophers at all. However, over the past decade, there has been an increase in interest in Anglo-American philosophy of law: it is included in the programs on contemporary philosophy of law at universities in the Russian Federation[21], and there is also an increasing demand for translated literature of the prominent legal Anglo-American scholars. Today, the Russian reader can read such translated works as Lon Fuller's "Morality of law"[22]; "Natural Law and Natural Rights"[23] by John Finnis; “The Concept of Law” [24], “The Philosophy and Language of Law” [25], “Law, Liberty, and Morality” [26] by Herbert Hart, “The Authority of Law” [27] by Joseph Raz, “Legality” [28] by Scott Shapiro, “The Rule of Law and the Measure of Property” [29] by Jeremy Waldron, “The Philosophy of Law: A Very Short Introduction"[30] by Raymond Wacks.

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[20] Nersesyants V.S. Philosophy of Law: A Handbook for Universities [Filosofiya prava: Uchebnik dlya vuzov]. Moscow: Norma, 2005. P. 635.

[21] Several courses on the philosophy of law are taught at the Higher School of Economics for both jurists and philosophers: course "Philosophy of Law" [internet resource] // Higher School of Economics. URL: https://www.hse.ru/edu/courses/339549904 (accessed 08.08.2022); course "Contemporary Philosophy of Law" [internet resource] // Higher School of Economics. URL: https://www.hse.ru/edu/courses/339496745 (accessed 08.08.2022); Research seminar "Actual problems of the history, theory and philosophy of law" [internet resource] // Higher School of Economics. URL: https://www.hse.ru/ma/histlaw/courses/470896470.html (accessed 08.08.2022); English course "Philosophy of Law" [internet resource] // Higher School of Economics. URL: https://www.hse.ru/ma/histlaw/courses/470907696.html (accessed 08.08.2022).

[22] Fuller L. Morality of law [Moral' prava]. Moscow, Chelyabinsk: IRISEN, Sotsium, 2016.

[23] Finnis J. Natural Law and Natural Rights [Estestvennoe pravo i estestvennye prava]. Moscow: IRISEN, Mysl', 2012.

[24] Hart H. L. A. The Concept of Law [Ponyatie prava]. Saint Petersburg: Publishing house of St. Petersburg State University, 2007.

[25] Hart H. L. A. Philosophy and Language of law [Filosofiya i yazyk prava]. Moscow: Kanon+ROOI «Reabilitatsiya», 2017.

[26] Hart H. L. A. Law, Liberty, and Morality [Pravo, svoboda i moral']. Moscow: Gaidar Institute Press, 2020.

[27] Raz J. The authority of law: Essays on law and morality [Avtoritet Prava. Esse o Prave i Morali]. Moscow: Gaidar Institute Press, 2021.

[28] Shapiro S. Legality [Zakonnost']. Moscow: Gaidar Institute Press, 2021.

[29] Waldron J. The Rule of Law and the Measure of Property [Verkhovenstvo prava i mera sobstvennosti]. Moscow: Gaidar Institute Press, 2020.

[30] Wacks R. The Philosophy of Law: A Very Short Introduction [Filosofiya prava. Kratkoe vvedenie. Moscow: Gaidar Institute Press, 2020.

What about Ronald Dworkin's philosophy of law — now two translations of his main philosophical and legal works "Taking Rights Seriously" [31] and "Law's Empire" [32] have been published, as well as his article "Liberalism" [33] (the original version of which is part of his collection "A Matter of Principle"[34]) was published along with articles by John Rawls, Charles Taylor, Michael Sandel in collection "Contemporary Liberalism" [35].

In Russia Dworkin's philosophy of law and his legal conception were given very modest attention, Herbert Hart and his positivist philosophy of law were more popular. Also, there are some articles in Russian literature on general issues of philosophy of law[36]. Today we can say with confidence that interest in Dworkin has increased significantly, especially after the publication of "Law's Empire". Dworkin's philosophy of law is also touched upon in Raymond Wacks' review guide to Anglo-American philosophy of law "The Philosophy of Law: A Very Short Introduction", as well as in the book "Legality" by the American philosopher and jurist Scott Shapiro and "The Authority of Law" by Joseph Raz.

We may identify an interest in Dworkin's legal philosophy of the Russian academic society as low: in Russia, Dworkin's theory of law has become the

[31] Dworkin R. Taking Rights Seriously [O pravakh vser'ez]. Moscow: ROSSPEN, 2004.
[32] Dworkin R. Law's Empire [Imperiya prava]. Moscow: Gaidar Institute Press, 2020.
[33] Дворкин Р. Либерализм // Современный либерализм: Ролз, Берлин, Дворкин, Кимлика, Сэндел, Тэйлор, Уолдрон. М.: Прогресс-традиция, 1998.
[34] Dworkin R. A Matter of Principle. New York: Oxford University Press. Inc., 1986. Pp. 181–204.
[35] Современный либерализм: Ролз, Берлин, Дворкин, Кимлика, Сэндел, Тейлор, Уолдрон. М.: Дом интеллектуальной книги, Прогресс-Традиция, 1998.
[36] Касаткин С. Н. Источники права и действительность правовых норм: некоторые следствия концепции правил Г. Харта для российской юриспруденции // Сборник научных статей XIII Всероссийской научно-практической конференции. В 2-х частях. Самара: Самарский государственный экономический университет, 2022; Нехаев А.В. Плохой закон как чистое право: критические заметки к философии права Г. Л. А. Харта // Вестник Томского государственного университета. № 440, 2019; Дидикин А. Б. Аналитическая философия права: истоки, генезис и структура. Томск: Изд-во Том. Ун-та, 2016; Дидикин А. Б. Правовой позитивизм и эмпирические основания юриспруденции: концепции Дж. Остина и Г. Харта // Вестн. Новосиб. гос. ун-та. Серия: Право. Т. 11. вып. 3, 2015; Дидикин А. Б. Сущность международного права: теоретические подходы Г. Кельзена и Г. Харта // Евразийский юридический журнал. № 7 (86), 2015; Оглезнев В. В. Теория юридического языка в философии права Г. Харта: диссертация на соискание ученой степени доктора философских наук. Национальный исследовательский Томский государственный университет. Томск, 2012; Оглезнев В. В. Переосмысление и новая интерпретация дискуссии между Г. Л. А. Хартом и Л. Л. Фуллером и их значение для аналитической философии права // Вестник Томского государственного университета. № 330, 2010; Касаткин С. Н. Основные идеи «Постскриптума» Герберта Л. А. Харта // Вестник Самарской гуманитарной академии. Серия «Право». №1, 2008; Касаткин С. Н. Основной труд Герберта Л. А. Харта (на публикацию русского издания книги «Понятие права») // Вестник Самарской гуманитарной академии. Серия «Право». №2, 2007; Макаренко В. П. Аналитическая политическая философия. М: Праксис, 2002.

subject of two dissertations (on the theory of state and law[37] and on political science[38]), one monograph[39], and about two dozen of articles, of which five were published in 2021[40] and three in 2022[41].

The dissertation written by Ivan Churnosov " Ronald Dworkin's Legal conception" is one of the first works devoted to Dworkin's philosophy of law. The author devotes only one chapter to the legal conception, concentrating in the remaining chapters on Dworkin's theory of justice and his theory of values. In the opinion of researcher of the current thesis, Churnusov's dissertation is valuable but omits many legal aspects and focuses on the details of Dworkin's ethical theory. Also, Churnosov very unambiguously and unreasonably defined Dworkin's philosophy of law as part of the natural law theory. One of the arguments is the very fact of Dworkin's criticism of legal positivism, which can be considered a dubious argument, since positivists are also criticized by legal realists, naturalists, supporters of the economic analysis of law, etc. An article

[37] Чурносов И. М. Правовая концепция Рональда Дворкина, диссертация на соискание ученой степени кандидата юридических наук. МГЮА им. О. Е. Кутафина. М. 2014.

[38] Игнаткин О. Б. Проблема "Либерального равенства" в концепции Рональда Дворкина диссертация на соискание ученой степени кандидата политических наук. МГИМО, М. 2005.

[39] Касаткин С. Н. Границы империи: юридический интерпретативизм Рональда Дворкина на карте правовых теорий. Самара: Самарский юридический институт ФСИН России, 2021.

[40] Баженова Е. А. Рональд Дворкин о гражданском неповиновении // Философия права. № 1 (96), 2021; Аличумагомедов А. А. Теория прав человека Р. Дворкина В сборнике: Молодежная Наука Как Фактор И Ресурс Инновационного Развития. сборник статей III Международной научно-практической конференции. Петрозаводск, 2021; Касаткин С. Н. Спор Р. Дворкина и позитивистов в англо-американской юриспруденции: содержание и импликации для отечественных дискуссий о судейском правотворчестве // Судебное правотворчество: проблемы теории и практики. материалы международной научно-практической конференции. Российский государственный университет правосудия. М., 2021; Дворкин о семантике правовых и политических понятий Паттерсон Д. М. // Омский научный вестник. Серия Общество. История. Современность. т. 6. № 2, 2021; Чевтаев К. А. Правовой позитивизм и естественно-правовые учения сквозь призму интерпретативного понимания права Р. Дворкина инновации. наука. образование. 2021. № 32; Касаткин С. Н. Концепт "внутренней точки зрения" в критике позитивизма Дж. Финнисом и Р. Дворкиным: очерк позиций // философия права. № 2 (97), 2021; Касаткин С. Н. «теория права» vs. «теории судебного решения»: основания методологической квалификации правовых учений в полемике Р. Дворкина и позитивистов // Труды института государства и права российской академии наук. т. 16. № 4, 2021.

[41] Касаткин С. Н. Смысл юридической практики и установки теории права: комментарий к радикальной «герменевтике» Р. Дворкина // «Теоретическая и прикладная юриспруденция». № 2, 2022; Бадыра Е. О. Толкование и применение принципов права: концепция Рональда Дворкина // Vox Juris. Глас права Межрегиональное отделение Общероссийской общественной организации «Ассоциация юристов России» по Санкт-Петербургу и Ленинградской области. Том. Выпуск №1, 2022; Касаткин С. Н. Границы права и теория судебного решения: некоторые импликации спора Р. Дворкина и позитивистов // Наука XXI века: актуальные направления развития. №1–2, 2022.

by Kirill Chevtaev[42] is devoted to the analysis of Dworkin's theory of law, who, on the contrary, considers Dworkin's philosophy of law as a separate legal theory.

It is worth noting the article by Sergei Kasatkin “The concept of “early” R. Dworkin as a “third theory of law”” [43], in which the author emphasizes the need to understand the allocation of Dworkin's theory as a third alternative to positivism and the theory of natural law, since John Mackie did not take into account the entire corpus Dworkin's texts and modern forms of natural law. Also, a small article Konstantin Prokofiev and Denis Ivanov “Ronald Dworkin’s theory of principles – the “third way” of legal theory?” [44]. In fact, these articles limit the attention of Russian researchers to the question of the place of Dworkin's philosophy of law within its intellectual context. The remaining Russian-language articles are devoted to individual philosophical and legal theses of Dworkin[45].

Turning to foreign papers devoted to the subject of current research, we should mention once again the article by John Mackie “The Third Theory of Law”, which set the mainstream for defining Dworkin's philosophy of law as a theory that does not fit into the standard paradigm of positivism and natural law theory. This approach has supporters among researchers who emphasize the independence of Dworkin's theory in recent articles[46]. In addition, it is worth mentioning some legal positivists, who believed that, in general, Dworkin's philosophy of law fits into legal positivism with some adjustments. The assertion that Dworkin's philosophy of law is one of the theories of natural law

[42] Чевтаев К. А. Правовой позитивизм и естественно-правовые учения сквозь призму интерпретативного понимания права Р. Дворкина // Инновации. Наука. Образование. № 32, 2021.
[43] Касаткин С. Н. Концепция «раннего» Р. Дворкина как «третья теория права» // Вестник ВГУ. Серия: Право. №2, 2019.
[44] Прокофьев К. Г., Иванов Д. В. «Теория принципов» Рональда Дворкина – «третий путь» // Юридическая мысль. №4 (124), 2021.
[45] Касаткин С. Н. Концепт "Внутренней точки зрения" в критике позитивизма Дж. Финнисом и Р. Дворкиным: очерк позиций // Философия права. № 2 (97), 2021; Касаткин С. Н. «Теория права» vs. «Теории судебного решения»: основания методологической квалификации правовых учений в полемике Р. Дворкина и позитивистов // Труды института государства и права российской академии наук. т. 16. № 4, 2021.
[46] Nalbandian E. Notes on Ronald Dworkin’s Theory of Law // Mizan Law Review. Vol. 3 No.2, 2009.

sometimes is not even substantiated. For example, Scott Shapiro, analyzing Dworkin's interpretive concept, only casually mentions Dworkin as a natural law theorist.

Dworkin's thesis that legal practice should be considered in the "best light" and its bias towards normative jurisprudence leads some researchers to the idea that this is rather the theory of natural law. According to a recent research paper by Canadian legal philosopher Dan Priel — he identifies Dworkin's theory as legal realism. Despite the inconsistency of opinions, it can be said for sure that this problem has not been resolved and still exists.

Thus, the extent of investigation of Dworkin's philosophy of law in the UK and the USA can be considered as high, and on the indicated problem of dissertation research is as average. The extent of investigation of Dworkin's philosophy of law in Russia seems to be low, and on the problem of dissertation research it is extremely law.

**Relevance of Research**

It may seem that everything is clear with Dworkin’s philosophy of law in the Western academy, and we can only be content with the debates of the past around his philosophical and legal position and ready-made answers as to what Dworkin’s philosophy of law really is. In fact, the question of the status of Dworkin's philosophy of law is still open: Dworkin is still either considered as a natural law theorist, or some features of legal positivism are found in his theory. In September 2020, an international seminar was held, where the research “Making Sense of Nonsense Jurisprudence” was discussed and the thesis that Dworkin was in fact a legal realist was brought up for discussion. One of the justifications for this approach is an indication of Dworkin's close attention to the Theory of Adjudication.

Dworkin's philosophy of law is so ambiguous and confusing that Dan Priel urges all researchers to be extremely careful in reading and analyzing Dworkin’s papers. Dworkin himself is aware that his work “Taking Rights Seriously” can cause confusion, since it is not a holistic work, but a collection of

essays, which, according to Dworkin himself, do not reveal the full depth of the posed problem. Dan Priel points out that the current all-or-nothing approach to Dworkin's philosophy of law is that either Dworkin's theory must be fully accepted or abandoned altogether. This approach should be left aside and a closer look at Dworkin's philosophy of law, revealing both its advantages and disadvantages. One way or another, Dan Priel argues both with Dworkin's devoted supporters and with his fierce critics, arguing that his concept was considered not quite correctly all this time, and Dworkin himself made a significant contribution to jurisprudence and "offered a fundamental challenge to the work of most contemporary legal philosophers"[47].

Such a reconsideration of Dworkin's theory seems justified, since researchers not only in Russia, but in the USA and Great Britain do not pay much attention to his philosophy of law as part of his own general philosophical complex, which includes his views on jurisprudence, political philosophy, and ethics.

This dissertation is intended to make up for two important omissions: firstly, in the domestic literature, not enough attention was paid to the relationship between Dworkin's legal theory and his views in the field of ethics and political philosophy. Secondly, Dworkin's philosophy of law is not considered holistically as part of the general complex of his views. Indeed, Dworkin and the positivists have a completely different view of law: Dworkin's legal philosophy implies the integrity and coherence of law, provided with the help of principles. To describe this position, he resorts to a literary analogy and characterizes the administration of justice as a "Chain novel" in which each new chapter written by a judge must be in coherence with the previous one. The integrity and coherence of the "Chain novel" is to create the impression that the work was written by one author. Also at a later stage, Dworkin comes to the idea of the integrity of values and calls it "ethical holism".

[47] Priel D. Making Sense of Nonsense Jurisprudence [internet source] // SSRN. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3696933 (accessed 10.11.2020). P. 4.

A holistic view of law is refuted by positivists, who, on the contrary, adhere to the concept of the “open texture” of law, according to which we cannot find in law an answer to any judicial case. From Dworkin's point of view, the law is one large network (although he admitted the existence of judicial errors), thanks to that it is possible to give the right answer to resolve a case. Law for positivists is a set of norms and precedents unable to provide answers for all cases. This leads to the fact that the judge will eventually use Legal Discretion.

The question of relevance may also arise in the legal sphere: does it make sense to analyze Dworkin's philosophy of law, which belongs to a completely different philosophical and legal tradition? First, we cannot say that Russian law ignores the importance of legal precedent. Secondly, Dworkin goes beyond the philosophy of law in its narrowest conceptual sense and addresses many issues of political philosophy and ethics in legal theory: morality, civil disobedience, abortion, euthanasia, inequality, justice, and values.

Thus, the relevance of this study is provided by facts that:

1. The philosophy of law of Ronald Dworkin is analyzed for the first time in Russian-language literature taking into account the intellectual context, which includes the study of the origins of the Anglo-American philosophy of law, philosophical and legal schools, as well as its subject–matter;
2. Dworkin's philosophy of law is considered within the framework of his multidisciplinary approach: his political and legal research, views on ethics, as well as Dworkin's holistic view of the philosophy of law and ethics are considered;
3. The question of whether Dworkin's philosophy of law belongs to any of the legal schools or is a separate theory is considered as independent research issue;
4. The thesis covers the main stages of the development of Dworkin's philosophical and legal theory using both philosophical and legal conceptual apparatus.

**Object, Subject-matter, and methodology of the research**

The object of the study is Ronald Dworkin's philosophy of law as an integral part of the philosophical and legal tradition of the Anglo-American philosophy of law.

The subject-matter of the research is the scope of Ronald Dworkin's works devoted to the philosophy of law and related disciplines: the collections of essays "Taking Rights Seriously", "The Matter of Principle", the books "Law's Empire", "Justice in Robes", "Justice for Hedgehogs", "Freedom's law. The moral reading of the American constitution"[48]. The subject-matter also includes a wide scope of foreign and domestic research articles and monographs on the Anglo-American philosophy of law and Ronald Dworkin's philosophy of law.

The following methods were used in the study. The researcher was able to disassemble the scope of works included in the subject-matter of this thesis by using source analysis. The comparative method made it possible to compare the main features of philosophical and legal schools with the concept of Dworkin's philosophy of law. The history of philosophy approach was used to present the main stages in the development of Ronald Dworkin's philosophy of law and the development of Anglo-American philosophy of law in general. The synthesis helped to unite Dworkin's disparate concepts into a single interdisciplinary complex in such a way that, as a result, it was possible to reassemble Dworkin's philosophy of law. Using the method of contextual analysis, Dworkin's philosophy of law was considered within the framework of his interdisciplinary theory, as well as in the context of the intellectual environment to which Dworkin belong. In the thesis we also used an empirical method in order to test the constitutional and philosophical views of Dworkin by analyzing some recent

[48] Дворкин Р. О правах всерьез. М.: «Российская политическая энциклопедия» (РОССПЭН), 2004; Dworkin R. A Matter of Principle. New York: Oxford University Press. Inc., 1986; Дворкин Р. Империя права. М.: Издательство Института Гайдара, 2020; Dworkin R. Justice in Robes. Cambridge, London: The Belknap Press of Harvard University Press, 2006; Dworkin R. Justice for hedgehogs. Cambridge, Mass.: Harvard University Press, 2011; Dworkin R. Freedom's law. The moral reading of the American constitution. New York: Oxford University Press. Inc., 1996.

US Supreme Court cases.

**Aim and Objectives**

In the thesis, the applicant has set himself the overall aim of determining the place of Ronald Dworkin's philosophy of law within the Anglo-American philosophy of law. To specify the aim, the researcher should identify the main features of Dworkin's philosophy of law and answering the question whether his philosophy of law belongs to one of the existing legal schools or is it a separate alternative philosophical and legal theory.

To achieve the aim of the thesis, it is necessary to solve several objectives:

1. To explore the intellectual context in which the philosophy of law of Ronald Dworkin developed. Namely, to determine the time and geographical framework of the Anglo-American philosophy of law, to highlight the main approached within the Anglo-American philosophy of law, to find the main features of legal-philosophy schools, to determine the subject-matter of the Anglo-American philosophy of law. The solution to this objective is presented in the first chapter of the thesis;
2. To investigate the early stage of R. Dworkin's philosophy of law. Namely to investigate the content of the “Hart–Dworkin debate”, to determine the importance of this dispute for the Anglo-American philosophy of law, to investigate Dworkin's criticism of legal positivism, to determine the concept of principle and its place in Dworkin’s philosophy of law. The solution to this objective is presented in the second chapter of the thesis;
3. To explore the classical stage of R. Dworkin's philosophy of law. Namely to define the concept of "theoretical disagreements" introduced by Dworkin, to investigate the influence of this concept on the philosophy of law; to explore the method of "constructive interpretation", to establish the connection of this method with hermeneutics; explore the criticism of the legal positivism of the classical stage, as well as explore "law as integrity” — the legal theory developed by Dworkin. The solution to this objective is presented in the third chapter of the thesis;

4. To explore the philosophical and legal views of R. Dworkin on hard constitutional cases. Namely, to analyze the theory of “moral reading” of the Constitution of the United States. To analyze empirical data (Supreme Court precedents) to test the main theses of R. Dworkin. The solution to this objective is presented in the fourth chapter of the thesis;
5. To identify the main Dworkin’s multidisciplinary research to demonstrate the connection between the philosophy of law and the moral and political philosophy of R. Dworkin. Identify main features of Dworkin’s legal philosophy and compare his legal theory with the main legal schools of Anglo-American philosophy of law. The solution to this objective is presented in the fifth chapter of the thesis.

**Statements to be Defended**

1. The Anglo-American philosophy of law originated in Great Britain in the late 19th century. as a school of analytic jurisprudence led by legal scholar John Austin. The history of the Anglo-American philosophy of law is divided into two stages: the first includes the works of Bentham and Austin, the second stage begins around 1950 with the advent of Herbert Hart. The analytical philosophy of law spread to US universities only from the middle of the 20th century, so it was originally exclusively English approach. The analytical jurisprudence has completely taken over the philosophy of law and legal theory in Great Britain and the United States;
2. The opposition "positivism—anti-positivism" needs to be clarified. Nevertheless, this terminology still applicable in studies of the philosophy of law. Legal positivism of the second stage divided by internal directions and became "less positivist". In this thesis, we propose to consider the opposition "positivism— anti-positivism" not as two polar approaches, but as a spectrum of views;
3. Among the common important features of legal positivism are the following: (1) it uses the method of conceptual analysis; (2) is a general universal theory capable of describing any developed legal system; (3) is a descriptive theory,

i.e., morally neutral (the delimitation thesis*), (4) attaches great importance to the origin thesis*, and also, and most importantly, (5) provides for a fundamental criterion of legitimacy (e.g., a rule of recognition). We also came to the conclusion that the boundaries of legal positivism are blurring with the appearance of a division into its soft and hard variants, as well as with the advent of normative/ethical positivism;

4. Main features of legal realism: (1) emphasis on the theory of adjudication, (2) skepticism about legal rules and past decisions, (3) empirical research and (a) the social sciences analysis or (b) any rationale reason for creating a rule for a better future community;
5. As four basic tests for determining whether a theory belongs to the school of natural law, the following are distinguished: (1) the legal scholar believes that there is some answer inherent in human nature (reason) that endows moral, and therefore legal, argument with objectivity; (2) moral reasoning can be part of legal reasoning; (3) unjust laws are not laws; (4) whether the researcher himself admits that his legal concept is a theory of natural law;
6. "Hart–Dworkin Debate" is an independent phenomenon of the Anglo-American philosophy of law. Although, this term, conventionally accepted in the Anglo-American academic community, it does not reflect the true content of this dispute;
7. The classical stage of Dworkin's philosophy of law differs from the early stage in the extent of its development. The thesis of theoretical disagreement both challenged legal positivism and influenced the work of many researchers, including positivists. At the same time, the methodological turn to legal interpretation is largely based on hermeneutics, and the term “constructive interpretation” itself reflects the creative construction of meanings by the interpreter, and not the search for the author’s intention;
8. Dworkin's refusal to identify justices of the Supreme Court as conservatives and liberals should be weakened, and the approach itself complicated, since empirical evidence proves that this division does reflect the opposition of the

legal liberal and conservative blocs of the composition of judges, and is also generally accepted;

9. The philosophy of law of Ronald Dworkin is part of his general philosophical views concerning ethics and political philosophy. Unlike legal philosophers who use the conceptual method, Ronald Dworkin takes a multidisciplinary approach in his research. Dworkin considered his intellectual heritage in a holistic way, and also and understood law as integrity that fits into other areas — ethics and political philosophy - and correlates with them;
10. The philosophy of law of Ronald Dworkin indeed combines some point features of positivism, natural law, realism, and formalism, but it occupies a separate position and does not fully belong to any of the listed schools of philosophical and legal thought. Given the evolutionary nature of Dworkin's views and the fact that Dworkin's legal theory advocates fundamentally opposed views with legal positivists, his theory can be called "normative anti-positivism".

**Structure of the Dissertation**

The dissertation consists of an introduction, five chapters, a conclusion, a bibliography, and an appendix. Each chapter is divided into sections. The first chapter has three sections, the second and third chapters have four sections each. The fourth and fifth chapters both consist of two sections. Read more about the structure of the thesis and its content below in the "Summary of the main provisions of the dissertation".

## II. Summary of the main provisions of the dissertation

**The introduction** substantiates the relevance of the dissertation research and determines the place of Ronald Dworkin's philosophy of law in the context of the Anglo-American philosophy of law, highlights the extent of investigation of this topic in domestic and foreign literature, defines the object and subject-matter of the research, sets out the aim, objectives, and methodology of the work, and also formulates the statements for defense. The introduction also indicates the structure of the work and terminological explanations.

**The first chapter "Anglo-American Philosophy of Law"** deals with the tradition of analytical legal tradition. This chapter consists of three sections.

**In Section 1.1.** "The Origins of Anglo-American Philosophy of Law," the researcher explores the history of Anglo-American or analytic legal philosophy. Analytical philosophy of law was formed in the late 19th century; Jeremy Bentham and John Austin are called the founders of this approach. Analytical jurisprudence was based on the principles of legal positivism and was formed as a reaction to the traditional views of the supporters of the natural law tradition.

The Anglo-American/analytical philosophy of law can be divided into two stages. The first stage can be called classical: it includes the studies of J. Bentham and J. Austin, as well as analytical works devoted to their works. This stage in the history of Anglo-American philosophy of law can rather be called the history of English philosophy of law. At the same time, the period from 1885, when Austin's "Lectures on Jurisprudence" was published, until Hart's inaugural speech in 1953, has been called the "lost years of English jurisprudence". While the jurisprudence of Great Britain was experiencing difficulties, in the United States of America there was an active development of legal thought: the "case studies" movement, legal realism, sociological jurisprudence, and economic analysis of law.

The second stage is marked by the appearance of Hart and his supporters. More than sixty years have passed since the beginning of this stage.

During this time, the analytical philosophy of law has become the dominant trend in academic circles not only in Great Britain, but also in the United States. Although Hart's analytic positivism or neo-positivism took off in the post-war period, this rise was accompanied by the anti-positivist legal theories of Fuller and Finnis, as well as the early critiques of Ronald Dworkin.

**In Section 1.2.** "Approaches and Schools of Anglo-American Philosophy of Law" highlights the main directions of Anglo-American philosophy of law and the features of philosophical and legal schools. This further helps to determine the place of Dworkin's philosophy of law in the coordinates of the Anglo-American philosophical and legal tradition.

In contemporary Anglo-American philosophy of law, we can identify analytical and normative philosophy of law. The analytical philosophy of law includes a descriptive approach, that is, a description of law as it is. Also, the analytical approach is characterized by conceptual analysis, which considers various legal phenomena out of context and history. The main goal of this approach is to explore the nature of law and its necessary properties. The normative approach refers to the analysis of the law as it ought to be. Normative jurisprudence is characterized by interaction with ethics and political philosophy.

The second type of classification of legal theories is based on the opposition "positivism—anti-positivism". This division is one of the most frequently encountered and used distinctions, but at the same time it requires a number of clarifications, since terminological confusion regarding concepts has arisen in the Anglo-American philosophy of law. The rigid division into positivists and anti-positivists does not reflect the theoretical pluralism (“positivism”, “post-positivism”, “neo-positivism”, “quasi-positivism”, “anti-positivism”, “non-positivism”, as well as: “soft positivism”, "hard positivism", "ethical/normative positivism"). However, it is still worth keeping this division buy not in the form of polar positions, but as a spectrum that takes into account the nuances of legal theories.

Further, the thesis examines the main schools of contemporary Anglo-American philosophy of law: legal positivism, legal realism, natural law theory. The features of positivism are revealed: (1) legal positivism uses the method of conceptual analysis; (2) it is a general universal theory which describes any developed legal system; (3) is a descriptive morally neutral theory, (4) attaches great importance to the pedigree thesis regarding rules. This thesis is also indicated the blurring of the boundaries of legal positivism's inner approaches. Legal positivism divided into "soft" and "hard" positivism and appeared new movements like normative or ethical positivism.

Legal realism can be recognized by the following features: (1) emphasis on theory of adjudication, (2) skepticism about legal rules and past decisions, (3) empirical research and analysis by (a) the social sciences (according to Lighter) or by (b) any justification, including moral ones, in order to enact a rule for establishing better future for the community (according to Dworkin).

Four basic tests have been identified to determine whether contemporary philosophical and legal theory belongs to the school of natural law or not. The first and broadest assumes that there is some inherent answer in the human nature (or his mind), which gives objectivity to the moral, and hence the legal argument. The second test is that the moral reasoning can be part of the legal reasoning. The third says that unjust laws are not laws (also it's called a strong version of natural law). The fourth test is additional and more subjective, as it is based on whether the researcher himself admits that his legal concept is a theory of natural law.

**Section 1.3.** contains an analysis of recent discussion on the definition of the subject-matter of the Anglo-American philosophy of law. The analytical philosophy of law identifies itself with jurisprudence, is a general and descriptive theory that excludes morality and political philosophy from its subject-matter. Nowadays the analytical philosophy of law still retains the position of the dominant theory. However, this approach is criticized in many respects by scholars who believe that such "analytical core" significantly limits

the possibilities of the philosophy of law.

The participants in the dispute about the subject-matter can be divided into two groups. The first one consists of scholars who defend the boundaries of the analytical philosophy of law within the framework of a general descriptive theory. The second group consists of scholars who believe that the philosophy of law should also contain political philosophy issues, ethics, social and critical studies. The second group of disputants should also be divided into two subgroups "a" and "b". Members of the subgroup "a" believe that the philosophy of law and jurisprudence are different areas of knowledge, so it is worth protecting jurisprudence from the restriction influence of the philosophy of law. Those who are in the subgroup "b" identify the philosophy of law and jurisprudence, but they are trying to make their own adjustments to the subject of the philosophy of law by expanding its subject-matter.

**The second chapter "R. Dworkin's Early-Stage Philosophy of Law"** consists of four sections, it is devoted to the early stage of Dworkin's philosophy of law, it analyzes the essays published in 1977 in the collection "Taking Rights Seriously".

**Section 2.1.** "The Hart-Dworkin Debate as a Phenomenon of Anglo-American Legal Philosophy" begins with an examination of the most important phenomenon of Anglo-American legal philosophy — "the Hart-Dworkin Debate". The basis of the early stage of Dworkin's philosophy of law is the criticism of the Herbert Hart's legal positivism. Later Dworkin developed from this criticism his own legal theory.

Two conclusions can be derived from this section. First, the " Hart–Dworkin Debate" became an independent phenomenon of the Anglo-American philosophy of law and a subject-matter of numerous research. Secondly, the title of the debates is not entirely accurate, since it was conducted mainly between Dworkin himself and Hart's followers. Hart responded to Dworkin's criticism in the Postscript to the second edition of "The Concept of Law" published in 1994. While the first critical article of his opponent appeared in 1967.

**Section 2.2**. "Comparison between principles and rules". The concept of principles is one of Dworkin's main tools for criticizing legal positivism. For Dworkin's argument, it is important to prove the existence of principles that judges use in the legal reasoning. Dworkin's main goal is to show that principles exist, and that legal positivism is a defective theory because it does not include these principles in the realm of law. Dworkin demonstrates what principles exist, that there are distinguishes between principles and strategies, as well as between principles and rules. According to Dworkin, arguments in court regarding rights and obligations can only be supported by principled reasoning, but not by strategic reasoning, since the principle is oriented to the rights, and the strategy is oriented to the goals.

The main disadvantage of legal positivism is that the concept of law includes a system of rules defined by the rule of recognition and excludes principles from the field of law. Dworkin appeals to empirical data — real cases. According to Dworkin, rules and principles differ in their application. Rules are applied in all-or-nothing fashion. The rule cannot be applied partly — if it is valid and applicable, then the judge will include it in his legal judgment. Unlike rules, principles do not include in themselves information about the consequences of applying.

**In Section 2.3.** "A Critique of Herbert Hart's Rule of Recognition" we outline Dworkin's critique of Hart's fundamental rule of recognition.

This criticism includes, firstly, an analysis of the question of the duty of a judge to follow certain legal standards, secondly, criticism of Hart's social rule, and thirdly, criticism of the rule of recognition as an untenable criterion that does not take into account the existence of principles — in order to show it Dworkin introduces the concept of “institutional support”.

Dworkin criticizes Hart's social rule theory by using two main arguments. First, Dworkin believes that a social rule is being formed by practice but does not establish rules. He proposes a different way and, as an alternative to the social rule, introduces the term “normative rule”, which is not founded in

practice, but is justified by it. According to Dworkin, the social rule, and the duty inherent in it is “a plain fact” and not a normative requirement.

Dworkin turns to the moral philosophy and bases his critique of Hart's social rule on two kinds of morality. Conventional morality follows a certain fact of acceptance of the rule by society and the practice of following this rule. Concurrent morality unlike conventional provides that members of society are unanimous in recognizing a certain normative rule, but neither unanimity nor practice is the basis for the formation of this rule. If a social rule is always based on practice, then the source of any obligation is social practice. Dworkin does not agree with this interpretation. Thus, the problem lies in the fact that, according to Hart's theory, it identifies the rule and practice, or he derives one from the other.

Dworkin wondering if there is a rule of recognition that defines what is law and what is not, why does this rule not include in the scope of the law the principles invoked by the courts? He introduces the concept of “institutional support” which helps judges determine the applicable principle. Dworkin's main aim was also to defend against critics who argued that “institutional support” is in fact the rule of recognition.

“Institutional support” is not the rule of recognition for several reasons. First, unlike the rule of recognition, which is most often quite definite, “institutional support” cannot offer a clear and universal criterion. Secondly, “institutional support” is always an individual process of legal reasoning. Thirdly, the rule of recognition cannot be as extended as “institutional support” and include principles, since in this case the rule of recognition would be extremely bulky.

**Section 2.4.** “Criticism of judicial discretion”. According to legal positivism, if a "hard case" arises and there is no rule, the judge can go beyond the legal reasoning and decide the case at his own discretion. Since the scope of the positivist legal reasoning includes only rules, judges have to go beyond the law and create new rights and obligations. Dworkin rejects this concept and

argues against it. Dworkin analyzes the content of the concept “discretion” and uses the category of principles, as well as the concepts of “gravitational force” and “seamless web”, which in the classical stage will result in the theory of “law as integrity”.

Dworkin believes that legal positivism uses the concept “discretion” in a strong sense: the one who makes decisions is not bound by any rules, but he does not have unlimited freedom (reasons of rationality and efficiency). If the judge decides on his own, then he is no longer restrained by principles in the process. In general, if there is no applicable rule, then, according to legal positivism, the judge used discretion, since there are no standards — this approach does not take into account the principles that judges refer to. Dworkin believes that principles, like rules are also binding.

The positivist theory of judicial discretion gives rise to a certain theory of rights and obligations. According to legal positivism, rights and obligations are established only by rules. Dworkin contrasts this position with the "rights thesis". This thesis based insists that a judge does not create new rights by using discretion, he searches for rights – on the contrary they need to be found in principles. Dworkin tries to show that the judge does not apply to his personal moral principles but refers to the political decisions of the past (precedents). In "Taking Rights Seriously" Dworkin calls this "seamless web", and in " Law’s Empire" he develops this thesis into a legal theory "law as integrity", and "seamless web" is presented as a “Chain Novel" concept.

**The third chapter “R. Dworkin's Classic-stage Philosophy of Law”.** This chapter consists of four sections and addresses the classical period in Dworkin's philosophy of law. The main work of the classical period is his magnus opus " Law’s Empire" published in 1986. The classical period differs from the early period by the developed legal theory, as well as a bias towards legal interpretation.

**Section 3.1.** “Theoretical Disagreements” in R. Dworkin’s Philosophy of Law – contains an analysis of the concept of “theoretical disagreements”

introduced by Dworkin. According to his theory, in lawsuits and court cases in general, three types of issues: issues of fact, issues of law, and issues of political morality and fidelity. Differences of fact relate to the empirical side of the matter, which describes exactly what happened, who said or did what. Issues of morality and fidelity are dispute about whether considerations of justice should be resorted to, and whether these considerations can conflict with the principle of fidelity to the law? Dworkin considers the second type of issues of law to be the most difficult and tricky, when the parties disagree about the law on the basis of which the case should be decided.

Dworkin distinguishes between two kinds of disagreements about law: (1) empirical disagreements and (2) theoretical ones. In a legal dispute, there is an empirical disagreement about the law, when the parties to the case and the judge disagree about the fact that the law was passed. Dworkin notes that theoretical disagreements are ignored not only by ordinary people, but also by scholars (legal positivists). Theoretical disagreements are usually replaced by a third type of issues about morality and fidelity, which is expressed in public disputes about whether judges find law or invent it. According to Dworkin, theoretical disagreements exist (which is confirmed by practice), and judges at the same time argue about any statute not as a physical object (book), but they are trying to find out what the law really is, and not what it should be.

The concept of “theoretical disagreements” is caused a wide discussion and divided legal positivists into two camps: (1) those who believed that the argument is untenable (weak), and (2) those who recognized, that this concept challenges legal positivism.

**In Section 3.2.** “Constructive Interpretation Methodology and the Critique of Intention” the researcher turns to Dworkin's legal interpretivism. Using the method of constructive interpretation, Dworkin contrasts his theory of law with legal positivism, which he identifies as a semantic theory. Thus, Dworkin's theory is able to take into account "theoretical disagreements".

We may reduce Dworkin's legal interpretivism to several features of his methodology. Firstly, any social practice, objects of art and legal practice are the main objects of research. Secondly, it is important to note that a constructive interpretation of legal practice is institutional and implies the reasoning of officials within the framework of legal argumentation. Thirdly, interpretation consists in finding the best justification for any field: whether it be a literary work, cinema, or legal practice. Dworkin emphasizes that people apply interpretation across a wide range of practices and contexts.

For Dworkin, the interpretation of social practice is closest to artistic interpretation, since in this case social practice and an object of art are something created by people but already an independent phenomenon. Dworkin combines social interpretation and artistic interpretation into a single kind of creative interpretation, distinct from conversational and scientific interpretation. When we interpret the practice of applying rules, we are no longer working with the author's intention, but with an independent phenomenon.

It is important to note that Dworkin appeals to the positions of representatives of the hermeneutics of Hans-Georg Gadamer, Jürgen Habermas, as well as to the classical hermeneutics of Wilhelm Dilthey. Dworkin is one of those rare analytic legal philosophers who sometimes addresses continental philosophy and hermeneutics.

Dworkin's goal is to demonstrate the relevance of constructive interpretation not only for the interpretation of art objects, but also social practice. In order to show how interpretation works in social practice, Dworkin distinguishes three main stages of interpretation: (1) pre-interpretive, (2) interpretive, (3) post-interpretive. In the first pre-interpretative stage, the rules and standards of practice are identified. At the second stage, the interpreter seeks the rationale for the practice discovered at the first stage. In the third post-interpretive stage, the interpreter must understand what the practice actually requires and correct his understanding of the practice. An important prerequisite

for all three stages is homogeneity in understanding, which is generally true of practice, as the number of disagreements will increase from stage to stage.

Dworkin calls the change of concepts of understanding practice a change of paradigms. A competing interpretation may challenge the current paradigm and take its place. From our point of view, Dworkin's requirement that there be agreement about the practices themselves can be problematic for his theory. The requirement for a certain homogeneity in the understanding of practice and its interpretation becomes most difficult when the resolution of high-profile issues is at stake.

**In Section 3.3**. "A Critique of Legal Positivism as a Semantic and Interpretive Theory" presents an updated critique of Dworkin's legal positivism, taking into account the method he developed, which reflects the evolutionary nature of Dworkin's philosophy of law.

The criticism is based on the division of theories of law into interpretive and semantic ones. To the latter, he lists theories that are characterized by a linguistic analysis of the concept of law. Legal positivism, for example, being a semantic theory, claims that there is a linguistic criterion for defining the concept of law, which lawyers follow.

Semantic theories, according to Dworkin, contain a "semantic sting". This "sting" means that legal justification is reduced to an analysis of the language of law (Hart later disagreed with this interpretation). Interpretive theories, unlike semantic ones, focus on legal practice, including judicial practice. Since Dworkin sets himself the goal of ridding legal positivism of the "semantic sting" and turning it into a positivist theory of legal practice, he converts the semantic theory of legal positivism into its interpretive version of "conventionalism".

Conventionalism is based on the ideal of protected expectation. The logic is that members of society can plan according to the laws passed and precedents established. If the position of courts changes from case to case, then such a situation clearly violates the stability in society. The expectation argument is a strong argument for conventionalism. The fact that society must understand

what laws it must obey was written by many scholars: Lon Fuller, Joseph Raz, Jeremy Waldron. Thus, the conventional approach reflects the virtue of the rule of law and maintains the stability of the law. Dworkin points to the fact that often the Supreme Court overrules its decision, overturning even not-so-old precedents. Although conventionalism is based on the ideal of stability, Dworkin demonstrates that his own legal theory, which is discussed in Section 3.4., does not harm the ideal of protected expectations.

Dworkin believes that conventionalism cannot be justified through convention legal practice, since judicial practice is more complex and the search for conventions to justify it requires more effort. Hard cases are especially problematic for conventionalism. Dworkin distinguishes two types of conventionalism: strict and soft. Strict conventionalism uses an "explicit extension" of legal conventions (statutes and precedents), while soft conventionalism uses an "implicit extension" of the concept of legal convention and goes beyond explicitly defined statutes and court decisions. Strict conventionalism turns out to be a rather weak interpretive theory and cannot help judges in resolving hard cases. The soft conventionalist is looking for abstract conventions that could become the basis for solving any case. Dworkin concludes that the only possible form of the existence of conventionalism can only be its strict version. At the same time, soft conventionalism is more reminiscent of an abstract, undeveloped form of “law as integrity”.

**In Section 3.4.** "Dworkin's theory "law as integrity" — we reveal Dworkin's legal theory which he puts forward as a response to legal positivism and its interpretative version — conventionalism.

Dworkin considers integrity as a political virtue. It is a necessary unifying element of political life, since in an imperfect society there is always the risk of exacerbating the conflict between political ideals: justice, fairness, and due process. Dworkin distinguishes two principles of political integrity: (1) the legislative principle refers to the moral consistency of lawmaking and (2) the judicial principle, which, by analogy, requires the same consistent of precedents.

Dworkin focuses on the judicial principle of political integrity and proposes, as an alternative to positivism as conventionalism — the "law as integrity" theory.

An important element of the theory of political integrity regarding the activities of the legislature is the criticism of the "checkerboard" laws, which are the result of political bargaining. Through this critique, Dworkin argues that in addition to justice and honesty, there is also virtue in the form of integrity. Deciding like the “checkerboard” law is inherently unprincipled for Dworkin. Since, firstly, it contradicts the integrity and, secondly, to justify the fact that, according to some logic, someone is deprived of the right, and who to acquire – it is to resort to opposing principles to substantiate parts of one's decision. Laws must be not only coherent within themselves, but also coherent within the framework of the general moral policy of the country.

For Dworkin, judges are both authors and critics. To justify his position, he introduces the genre of “Chain Novel" the chapters of which must be sequentially written by different authors. Each subsequent author must, firstly, strive to make the novel as good as possible and, secondly, adhere to the principle of integrity of the overall idea of the novel. Dworkin turns to legal practice, arguing that the judge is the author of the "chain novel", since the subject of his legal research is previous judicial precedents.

To demonstrate the complex interpretative process, Dworkin uses the fictitious judge Hercules. Dworkin introduces the figure of Hercules to demonstrate the complex process of interpretation, laying out each stage and explaining them. As a result, Hercules shows how integrity works in practice.

**The fourth chapter “R. Dworkin’ Philosophy of Constitutional Law”** consists of two sections. This chapter is devoted to one of the most important legal branches for the United States. The content of the chapter is related to the US Constitution and its amendments, as well as to the US Supreme Court, its composition and activity in interpreting the provisions of the Constitution.

**Section 4.1.** "The main approaches to the philosophy of constitutional law and Dworkin’s moral reading theory" contains an analysis of approaches to

interpreting the decisions of the US Supreme Court. The Supreme Court is one of the most powerful and influential courts. With a single decision, the court can resolve major political and ethical dilemmas.

The two main opposing schools of constitutional interpretation are the liberal (1) Living Constitution approach, as well as the more conservative (2) Originalism. According to originalism, it is necessary to show respect for the provisions of the Constitution enshrined in the document and try not to go beyond the ideas laid down by the authors of the text. The main argument of the originalists against the "living constitutionalists" is that the latter do not even interpret, but, in fact, change the Constitution with their views and "rewrite it". Supporters of a "living constitution" are also called judicial activists for their pro-active role in interpreting political rights.

Dworkin develops his own approach to the interpretation of the Constitution, which he calls "moral reading" — it is inextricably linked with political morality, thus demonstrating once again his anti-positivistic mood. Dworkin gives his answer to the question of how to interpret abstract propositions. According to his approach, these provisions contain moral principles.

Like the legal philosophy of the "living constitution", Dworkin's approach also has critics who believe that the Supreme Court, by interpreting the norms of the Constitution in this way, expands its meaning (and therefore changes it) and puts itself in the place of the legislation branch. Dworkin disagrees with this position and believes that the moral reading is not as radical and anti-democratic as critics try to reveal. He refers to the fact that judges in their practice consider the Constitution as a set of some abstract moral provisions that must be interpreted through new moral judgments.

Following a “moral reading”, it is necessary to find the best concept (this looks like the method of constructive interpretation) of constitutional moral principles, which is limited by the history and integrity of the law. Thus, the reputation of moral reading as a radical philosophy of interpreting the

Constitution is greatly exaggerated, since judges do not decide on their own, based on their own views.

Also, Dworkin criticizes the division of judges into conservatives and liberals. This division is based on (1) an assessment of liberal / conservative decisions or dissenting opinions of judges and based on (2) the party affiliation of the president who appointed a justice. Dworkin believes that such a division is not accurate, and history knows cases that can refute this approach. For example, liberal Judge Earl Warren was appointed by Eisenhower (Republican President). Dworkin proposes an alternative division between "judicial activists" and "strict constructionists". The activists are those who adhere to the “living constitution” approach, and the latter the originalists. In this part of Dworkin's constitutional philosophy of law, his political philosophy (liberalism) and his legal theory based on moral rights are intertwined.

**In section 4.2.** “Analysis of Dworkin’s Judicial Philosophy through the Practice of the US Supreme Court". This section analyzes the judicial materials of the US Supreme Court and applies to the current situation regarding the division of judges into liberals and conservatives. The main objectives of the section are (1) to show that “moral reading” is indeed part of the practice of the Supreme Court, and (2) to demonstrate that, nevertheless, the division into liberal and conservative legal movement is indeed relevant, although it requires clarification, which was given by Dworkin. Thus, we should weaken Dworkin's thesis that the division into liberal and conservative judges needed to be discarded.

The Obergefell v. Hodges case on the recognition of same-sex marriages in all US states was decided on June 26, 2015. The decision consists of two main parts: (1) the opinion of the court and (2) dissenting opinions of those who disagree with the decision. The court's decision and dissenting opinions do not contain a liberal or conservative view of the plaintiffs' claims themselves. Judicial activists interpret the Constitution in accordance with the position that the constitution follows the evolution of society's moral ideas. Strict

constructivists (originalists) oppose such an anti-democratic approach and believe that some issues should be decided by the people of the United States not to by judges of the Supreme Court.

As a result of the research, we conclude that Dworkin's theory of “moral reading” (including activism and the rights thesis) fits into the legal argumentation of the court's opinion. It also focuses on legislative and judicial history – a chain of judicial precedents. This case shows that the method of moral reading is relevant and verifiable in practice. However, it is worth weakening Dworkin's thesis and recognizing that, nevertheless, within the framework of the activities of the judges of the Supreme Court, there is a conservative legal movement and a liberal legal movement.

The first argument in favor of distinguishing judges between the Democratic (liberal) legal wing and the Republican (conservative) legal wing is that the activities of the Supreme Court are part of the cultural context and the news agenda in the United States. Dworkin's thesis is not completely rejected, but it needs to be weakened and recognized that legal conservatism includes the concept of strict constructivism and originalism, while legal liberalism includes the concept of judicial activism. The second argument concerns the political affiliation of judges, which is not limited to whether the president appointed a justice a Democrat or a Republican. In the United States, legal education is built within a specific academic environment, which can be either more liberal or more conservative.

This point of view is also supported by the current situation regarding the case of Roe v. Wade (which in 1973 legalized abortion). It was the very precedent that the Republicans sought to overrule. In June 2022, the U.S. Supreme Court decided by a six-to-three majority to overrule one of the most important precedents in the history of the Supreme Court. The decision indicated that "Roe v. Wade" was a mistake. According to the court, by the time this precedent was passed, abortion was banned in thirty states, but there was a trend towards liberalization, but Roe v. Wade "abruptly stopped this political process",

and the decision itself is essentially "the use of brute judicial power." Even though the judges follow strict constructivism, this decision is political.

Based on practice, we propose to classify the views of Supreme Court justices not by analogy with cells, but as a spectrum in a coordinate system, considering their political commitment, scientific work, as well as the legal basis in their decisions.

**The fifth chapter "Features and the place of R. Dworkin's theory in the Anglo-American philosophy of law"** consists of two sections. This chapter focuses on the multidisciplinary of Dworkin's theory and sums up the main results of the dissertation.

**In section 5.1**. "The multidisciplinary approach and R. Dworkin's philosophy of law" Dworkin's political, legal, and ethical studies are analyzed to prove the multidisciplinarity of his legal theory. Unlike Hart, who did not mix his general theory with multidisciplinary writings, Dworkin considered the philosophy of law in its connection with political philosophy and morality, and also devoted a large number of studies to political philosophy and ethics.

One of Dworkin's most important multidisciplinary studies is his critique of the views of the English jurist and philosopher Patrick Devlin on the criminalization of homosexual behavior in the UK. According to Devlin, society has the right to defend itself against what it considers vicious and immoral. Dworkin entered into a controversy with Devlin. He emphasizes that it is worth paying attention to the relationship between democratic theory and moral enforcement.

Arguing about the extent to which the morality of society and its ideas about morality can neglect the individual rights of an individual in favor of the common good, Dworkin resorts to an analysis of the "moral position". Dworkin's main goal is to show that the moral ideas of society may not be argumentative. Dworkin points out the fallacy of Devlin's understanding of morality and the "moral position" of the individual and society in the anthropological sense. Dworkin shows that often moral beliefs and "moral

positions” are prejudices, emotional reactions, erroneous and unreasoned factual judgments, reference to authority or opinion. The above must be separated from the genuine “moral position”.

The next major topic is civil disobedience. Dworkin emphasizes that the history of this idea in the UK and the US has been somewhat different, as the United States has gone through a long series of political divisions that have particularly exacerbated the dilemma of legitimacy. One example of civil disobedience is conscientious refusal to join the army (Conscientious objector). This problem in the realm of jurisprudence relates to the distinction between law and morality: can the moral right of to refuse military service outweigh the legal obligation to join the army?

According to Dworkin, the moral right to disobey the law can be justified. While defending the right to civil disobedience, Dworkin nevertheless argues that the argument about the immorality of the law cannot be sufficient. Since, by analogy, those who adhered to racial segregation could violate civil rights laws, citing the fact that they are contrary to their moral feelings. Thus, for Dworkin, the reference to justice and only to it is not a sufficient argument, and he requires to analyze the case of civil disobedience also from the point of view of law.

Dworkin believes that a citizen can act according to his convictions even after the highest authority has made its decision. If the case involves fundamental political rights, and there is a possibility that the Supreme Court may have made an erroneous decision, then civil disobedience does not go beyond social rights.

**In section 5.2.** “General description of R. Dworkin concept of legal philoosophy” the results of the research are given: (1) the main features of Dworkin's philosophy of law are presented, (2) his philosophy of law is analyzed in relation to the main legal schools of Anglo-American jurisprudence.

According to the "chronological" classification, three main stages of his philosophy of law are distinguished: (1) early stage — the central work "Taking

Rights Seriously" (2) classical stage — the central work "Law's Empire " and (3) late stage — "Justice for Hedgehogs". According to the second classification, philosophy of law can also be divided into two types: (1) general philosophy of law and (2) philosophy of law on particular political and ethical issues.

The positivists and legal naturalists, represented by Lighter, mainly criticize Dworkin for his way of philosophizing, which differs from their wat to do it. Despite these criticisms, it is still worth recognizing Dworkin's status as a philosopher: firstly, according to research topics, which also include ethics and political philosophy, and secondly, Dworkin, despite his interest in practice, and given his multidisciplinary scope of interests, so he can hardly be a "theoretically ambitious lawyer".

Next conclusion is that Ronald Dworkin cannot be called an analytical philosopher of law in the narrow sense of the term "analytical philosophy of law" as a school with its own special method of law investigation. However, if we perceive the "analytical philosophy of law" as a tradition and an intellectual style, then it seems reasonable to ignore the criterion of apoliticality and conceptual analysis and rank Dworkin among the analytical philosophers.

The following is an analysis of Dworkin's philosophy of law. One of the most important characteristics of Dworkin's philosophy of law is his holistic approach, which explains Dworkin's propensity to study a wide range of issues and to look for relations between them. The arguments in favor of holism are: (1) the theory of legislative and judicial integrity (2) criticism of the orthodox positivistic two-system picture (3) the fusion of law and morality. Another argument in favor of holism is (4) Dworkin's thesis about the unity of values. The section also touches upon the question of the influence of W. V. O. Quine on the philosophical views of Ronald Dworkin.

The next important feature is Dworkin's focus on practice and legal system of the United States. The focus on the courts is vital to his entire philosophy of law. Dworkin is sure that the understanding of law, as well as the awareness of what and from whom the law requires, depends on statements that

acquire their meaning and meaning only within practice. Also, an important characteristic of Dworkin's philosophy of law is a wide range of issues of interest to him. In addition to the philosophy of law, Dworkin is also engaged in research in the field of political philosophy. In addition to ethics, Dworkin also introduces into his analysis hermeneutics, alien to the Anglo-American tradition.

Applying the results that were obtained in the first chapter of the dissertation research, the following is an answer to four questions: (1) Is Dworkin a natural law theorist? (2) Is Dworkin a legal realist? (3) Can Dworkin be called a legal positivist? (4) is his philosophy of law an independent theory?

We conclude that Dworkin is a supporter of natural law only in a weak sense, according to which any theory that mixes law and morality is a natural law theory. In a strong sense, Dworkin can barely be recognized as a supporter of natural law – since the classical version of his legal philosophy recognizes the evil law as law. At the same time, even in "Justice for Hedgehogs" the evil law can be recognized as law. In this case the difficulty is that Dworkin rejects the wording itself, bringing the dispute about law and morality purely into the sphere of morality. So, we cannot describe Dworkin as a natural law theorist.

Further, we conclude that R. Dworkin is not a legal realist. Undoubtedly, like the realists, Dworkin focuses his research on judicial branch. Dworkin and realists have different understandings of what is considered acceptable judicial legal reasoning. For Dworkin, legal reasoning is strongly concerned with rules, precedents, and principles. Individual rights and principles were not the vital of realist judgments. Legal realists are still closer to positivists, since in their legal justification they resort to various arguments, but they tried to bypass or reject the reference to justice.

The following is an answer to the question, can Dworkin be called a legal positivist? The answer is “No”. Dworkin rejects the main thesis of the positivists about the rule of recognition, while his concept of "institutional support" is not his alternative, as was proved in the second chapter.

At the end of the section, we conclude that Ronald Dworkin’s philosophy of law is self-sufficient and original. A common title for the entire philosophical and legal complex, which includes all stages, would be a common a name: “normative anti-positivist theory”, which can contain the characteristics inherent in natural law, realism, and positivism, while maintaining its uniqueness.

**In conclusion**, the main results of the dissertation research are presented, including the main conclusion that R. Dworkin's concept of legal philosophy should be considered as normative anti-positivist theory — an alternative to the main classical schools of Anglo-American philosophy of law.

**The Appendix** is an important part of the study. Appendix No. 1 contains a list of names of researchers (arranged in alphabetical order) and short description for each of them; Appendix No. 2 contains a graphic visualization of the history of the Anglo-American philosophy of law; Appendix No. 3 will introduce the reader with the scheme of schools and directions of the Anglo-American philosophy of law; Appendix No. 4 contains a visualization of the relation "positivism–anti-positivism"; Appendix No. 5–7 contain the plots (Syllabus) of three legal precedents that Dworkin most frequently uses in his research: the Riggs v. Palmer case, the Snail darter case, the McLaughlin case; Appendix No. 8 contains a suggested example of the division of US Supreme Court justices.

## III. Author's publications on the topic of the dissertation

Author's publications included in the list of high-level journals of the National Research University Higher School of Economics:

1. Koval S.V. Debate on the Subject Matter of Anglo-American Philosophy of Law, Antinomies [Antinomii]. Vol. 21, Issue. 3, 2021. Pp. 30–54. (In Russ.);
2. Koval S.V. The distinction between principles and legal rules in the R. Dworkin's philosophy of law. Bulletin of Moscow University. Series 7. Philosophy. [Vestnik Moskovskogo universiteta. Seriya 7: Filosofiya]. No. 2, 2020. Pp. 63–71(In Russ.);
3. Koval S.V. The History and Foundations of Criticism of H.L.A. Hart's Legal Positivism in R. Dworkin's Philosophy of Law. Russian Journal of Philosophical Sciences [Filosofskie nauki]. Vol. 62, No. 7, 2019. Pp. 124–142 (In Russ.).

Author's other publications:

4. Koval S.V., Pavlov A. V. The Meaning and Significance of "Legality" in the Theory of Law / Legality / transl. by. S. V. Koval, ed.by A. V. Pavlov. Gaidar Institute Press [Izdatel"stvo Instituta Gaidara], 2021. Pp. 11–34 (In Russ);
5. Koval S.V. Book Review: Waldron J. (2020) The Rule of Law and the Measure of Property. Moscow: Izdatelstvo Instituta Gaydara. — 144 p. (In Russ.). The Journal of Sociology and Social Anthropology [Zhurnal sotsiologii i sotsialnoy antropologii]. 23(1), 2020. Pp. 243–253 (In Russ);
6. Koval S.V. Category of Principles In R. Dworkin's Philosophy Of Law. Knowledge. Understanding. Skill [Znanie. Ponimanie. Umenie]. No. 3, 2019. Pp. 237–244 (In Russ.).