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Comparison of Two Approaches to Methodology of Legal Theory

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Abstract

This paper focuses on one of the main arguments in contemporary Anglo-American legal circles: what is the essence of legal theory? This paper is divided into three parts: the first part combs the methodology approach of descriptive method theory, represented by Hart, Raz and, more recently, Julie Dickson, and sums up its three important propositions; the second part summarizes the criticism of the descriptive theory by non-positivism scholars such as Dworkin, Finnis and Stephen Perry; in the third part I put forward my conclusion on the basis of the first two parts: the theory of descriptive law is not a successful legal theory, which should be a theory based on descriptive and normative methodology.

Key words: Methodology of legal theory; Descriptive; Normative

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INTRODUCTION

"What is the law?" It is the core problem of jurisprudence or legal theory[1], which is always debated by the schools of natural law, positivism and so on. Since the publication of the second edition of H.L.A. Hart's *The Concept of Law* in 1994, the field of vision of contemporary Anglo-American jurisprudence had expanded from "what is law" to "what is the essence of jurisprudence or legal theory".[2] The substantive controversy of the legal theory is that of "what is the essence of jurisprudence or legal theory?", or "Is there an inevitable link between law and morality?". The methodology dispute of legal theory argues whether there is an inevitable connection between law theory and morality. Accordingly, legal positivism can be classified as substantive positivism and methodological positivism: the former insists that there is no inevitable connection between law and morality, while the latter maintains that legal theory can and should provide a neutral description of law. Substantive positivism mainly consists of separation proposition and social fact proposition. At the methodological level, the focus is no longer "what is law", but instead focuses on the legal theory itself, mainly involving the nature and task of the legal theory. Generally speaking, the two are closely related and correspond to

[1] This paper does not intend to sedulously distinguish between jurisprudence and legal theory. For the distinction and connection between the two categories, see Professor Chen Jinghui's article, "Why is the Legal theory important-the knowledge Framework of Law and the position of Jurisprudence in it", *Law Science*, No. 3, 2014, pp. 66-67. Professor Chen Jinghui pointed out the difference and connection between jurisprudence, legal theory and philosophy of law: philosophy of law is the narrowest of the three concepts and is used to refer to "second-order theory", which is a relatively philosophical field; There is no substantial difference between jurisprudence and law theory. They both include normative theory and philosophy of law as second-order theory. But because the word "Jurisprudence" sometimes be used equal to "Legal science" in the most general sense, in addition, "Jurisprudence" would also be used in the "Medical Jurisprudence" and "Equity Jurisprudence" and so on, then the meaning of the word "Legal theory" is relatively clear.

[2] See Wang Zanrong, *From legal Standardization to Jurisprudence Methodology*, Yuanzhao Publishing House, Taiwan, Dec. 2013. Zhuang Shitong distinguished the dispute of the legal theory into two categories: "substantive controversy" and "methodological controversy", the former is concerned with "what is the nature of law", the latter is concerned with "what is the nature of the legal theory"? Zhuang Shitong: "*Is descriptive Law Theory possible?-A critical reflection"*, Review of Politics and Social philosophy, June 21, 2007, p. 36.

each other (Perry, 2001, p.331). Both Hart and Joseph Raz are substantial positivist and methodological positivists, who hold that the substantive law can be fully explained; John Finnis, Ronald Dworkin and others opposed the positivism approach of Hart and Raz, insisted on the approach of normative methodology and hermeneutics methodology, and considered that the legal theory cannot be separated from the moral evaluation.

1.THE POSITION AND METHOD APPROACH OF DESCRIPTIVE LEGAL THEORY

1.1 Hart: the "Internal View" of "External Observer"

The descriptive legal theory was first put forward by Hart. In the preface to *The Concept of Law*, Hart pointed out that this book can also be regarded as an attempt to describe the sociological (descriptive sociology). In the postscript, he made a clear and concise summary: this book provides a theory of what the law is, which is both general and descriptive; "described" means "morally neutral and without legitimate objectives" (Hart. 2011, p. 209).

Hart's methodological path stemmed fundamentally from the distinction between the law of reality and the law of nature (the same as the distinction between is/ought) made by analytical jurisprudence, starting with Bentham and Austin. Bentham has put forward two kinds of distinctions about the study of jurisprudence: one is the expository jurisprudence, that is the study of the de facto existence of the law, the purpose of which is to illustrate the universal characteristics of positive law; Second is the censorial jurisprudence, of which is to put forward moral examination of positive law as the basis of law reform. As a successor to Bentham's thought, Austin pointed out more clearly: "the existence of law is one thing, and its advantages and disadvantages are another. Whether the law exists or not is another question. "(Austin, 2001, p.5).

The most important reason for Hart's criticism of Austin's order theory is that it fails to explain the real legal practice and reveal the unique characteristics of legal operation. From the reflective and critical attitude of actors towards rules and violations, he realized that participants would take an internal view of rules and further analyzed that the internal aspect of rules was the essential attribute of law (Zhuang, 2007, p.36). The task of Hart's legal theory is to explain the concept of law and the essential characteristics of descriptive method in a way that does not involve moral evaluation. According to descriptive methodology, legal theory aims to "provide a more accurate analysis of the unique structure of the domestic legal system and a better understanding of the similarities and differences between the three social phenomena of law, coercion and morality," To promote the development of legal theory " (Hart, 2011, p.209).

In Hart's opinion, there is nothing in the plan of descriptive jurisprudence to prevent non-participant external observers from describing the way participants view the law from this internal perspective. It is for this reason that he explained in detail that participants express their internal views by accepting the law as guidance and criterion of their actions. Of course, the legal theorist who describes it does not share participants' acceptance of the law, but he can and should describe such acceptance. To this end, the described legal theorist must indeed understand what is taking an intrinsic view and, in that limited sense, must be able to place himself in the position of an internal member; But in doing so, it is not necessary to accept, endorse the law, or share the internal views of internal members, or in any other way renounce its described position (Hart, 2011, p.212). The philosophical analysis of the institution of law in different country and society can be descriptive, which means that the participants in the system must participate in it with value. These values are of great relevance to any fruitful description. However, this is neither the value of theorists engaged in descriptive work nor the need to share them. The legal theorists only described or analyzed these values, whose true masters are the active participants in the legal system.

1.2 Joseph Raz's "Social Understanding" Thesis

Joseph Raz belongs to the camp of descriptive jurisprudence. Like Hart, he also advocated substantive positivism and methodological positivism, which support each other. Raz's substantive positivism is summarized as two points: one is the sources thesis and the other is the authority thesis. The content of the sources thesis is that the common foundation of all positivism is that the law has a social source, that is, the content of the law and its existence can be determined by reference to the social facts, without having to rely on moral evaluation (Chen, 2006). Raz believed that authority, as a practical concept, is a normative power that can change people's reasons for action. Since the law is not a system of isolated norms with separate functions, but a system of reasons that jointly determine the content of its provisions, presenting an authoritative system of standards, and requires that all who apply it recognize its authority (Raz, 2005, pp.14-28). The authoritative proposition guarantees the propositions of origin and describes an essential feature of legal practice.

In methodology, Raz advocated descriptive construction of legal theory, mainly reflected in his theoretical discussion of the concept and nature of law, and regards the theory of constructive law as a reunderstanding of social understanding of legal practice. That is, the self-understanding of our legal practice (Zhu, 2016). Raz believes that the task of the legal theory is

not to study the concept of law as Hart says, nor is it the meaning of Dworkin's inquiry into the law, with the aim of explaining the law. And in order to promote people's self-understanding. Because law is a social system, a social system identified and referred to by the concept of law. People have certain attitudes or opinions about the law, and the legal theorist, in explaining the law, must take into account how people (living in the legal system) view the law (Wang, 2013, p.192). Therefore this thesis is called as "Social Understanding Thesis" (Zhuang, 2007, p.39). Whether the legal theory can properly explain these beliefs and attitudes about the law is an important judgment in determining whether the legal theory is successful or not.

Raz's legal theory is in communication with the view of the sociology of law, but Raz is of the view that, although both the law and the sociology of law are studying the law as a characteristic of a general social system, However, it is different from the law sociology to define a specific legal system or a specific type of law system, and the law theory tries to put forward a set of necessary characteristics for the existence and effect of the law. It is the "source proposition" of the "an authoritative argument" and the authority of the service to explain the authoritative nature of the law.

Although Raz pointed out that the task of law theory is to explain the essence of law, he did not abandon the important position of conceptual analysis in legal theory. "The legal theory explains the essence of law by the concept of analytical method" (Zhuang, 2007, p.223). Raz thought "even if the elaboration of the concept of law involves evaluative or ethical disputes, it is only possible after the conceptual dispute has been resolved, that is, the concept of law has been clarified," The point is that we must clarify the concept of law based on the shared judgment used by the concept before there is a way to go further into disputes involving ethical or moral issues." (Zhuang, 2007, p.239).

1.3 Julie Dickson: "Indirect Evaluation" and "Direct Evaluation"

Julie Dickson, Professor of Jurisprudence at Oxford University, is devoted to the study of jurisprudence methodology and meta-theory, the purpose of which is to reflect on the method of constructing the legal theory. Enhance our understanding of law and the nature of legal theory, and defend the descriptive jurisprudence of Hart and Raz.

Like Raz, Dickson believed that a successful legal theory contains two conditions for legal theses: (1) the legal thesis must be true; (2) the thesis can properly explain the nature of law. To that end, she asked the following question: What is the purpose of the legal theory that we are committed to constructing? What criteria will be adopted to judge the quality of this theory? What is the basis for our choice between competitive jurisprudence claims? Is the purpose of the legal theory in terms of object a descriptive, critical or evidentiary one? Are these different methodological approaches against each other? (Dickson, 2001, p.7).

By answering the above questions, Dickson put forward an indirect evaluation theory, which negates the dual division between traditional descriptive jurisprudence and normative jurisprudence. The methodological framework, which should be distinguished from the reality, has more or less influenced the jurists of later generations. This dualism, however, is misleading to Dickson, because it leads to the judgment of a legal theorist who is engaged in describing "such a law as in practice". In the process of developing this theory, she does not need to make any value judgment; on the contrary, the legal theorists who took Dworkin's approach refused to allow us to simply describe the law, but to necessarily include some moral values, the purpose and function of the law (Dickson, 2001, pp.8-9).

The conclusions above are based on an oversimplification of the traditional dualism of "is/ought ". The dual division is not only useless but also has its own problems. Its first difficulty lies in dividing the disputors into two methodological camps of "normative jurisprudence" and "descriptive jurisprudence". At the same time, it also fails to deal with the difficult and complicated meta-theoretical problems properly. Another difficulty in this division is the presupposition that the fundamental differences between the two camps lie in whether the legal theory is value-free or involving value judgement (Dickson, 2001, pp.30-31).

Whether the legal theorists advocated by Hart and Raz can successfully construct a legal theory without any value judgment, or Dworkin and Perry advocate that we will not be able to explain the legal theory effectively without moral judgment. These two points of view are biased, no matter what theory (including the legal theory) must pursue some pure post-theoretical value, such as simple, clear, accurate, comprehensive and harmonious, and so on. Even Hart's theory of descriptive law is still evaluative in this sense, not complete value immunity, but at best a relative value exemption. The reason is that it already contains a number of post-evaluation factors (Dickson, 2001, pp.33). Since it is pointed out that some post-established values must be pursued by any legal theory, it can be further deduced that any legal theory is not fully exempt from value, but must be a kind of evaluative legal theory. Hart's descriptive jurisprudence is based on an indirect evaluation position, while Dworkin's normative jurisprudence is accordingly based on a direct evaluation position based on moral evidence. Dickson finally led us to abandon the dichotomy between the "descriptive" and "normative" legal theory and tried to arrive at the middle position (Zhuang, 2007, p. 39).

2. THE APPROACH TO NORMATIVE LEGAL THEORY

2.1 Dworkin's Hermeneutic Methodology

Hart regarded his conceptual analysis theory as a descriptive jurisprudence, but after he died, he drew criticism from all sides. Critics are generally sceptical about whether legal theory can exist in a purely descriptive form. Among them, the most powerful critic was Dworkin. Dworkin's criticism lied not in conceptual analysis or philosophical description itself, but in what else we need in addition to description. In response, he said he simply did not understand what this descriptive jurisprudence was about to describe. Law theorists must express their own value identity in the process of description (Sun, 2013). Shapiro reminds us that it is best to see the battle between Hart and Dworkin as a dynamic whole, and that Dworkin constantly adjusts the target of his criticism to avoid Hart and his followers' response as effectively as possible. On the one hand, it modifies and improves one's own legal theory, on the other hand, it also leads the methodological turn in contemporary Anglo-American jurisprudence (Sun, 2013).

In the book *Law's Empire*, Dworkin criticized the descriptive position of legal positivism from the perspective of methodology. On the one hand, he put forward a substantive theory about the nature of law in order to compete with legal positivism. On the other hand, he put forward the legal theory of hermeneutics which can subvert descriptive methodology. Dworkin insisted that the best understanding of the law or the legal system is to adhere to an intrinsic participant's perspective, which inevitably leads to a methodology of "hermeneutics", and then clarifies the internal structure and logic of law by resorting to morality. This is similar to Hart's early polemist Lon Fuller, who insisted that the law is the existence of some kind of "value bearer".

According to Shapiro, Dworkin's criticism of Hart can be summed up in the relationship between legitimacy and morality. "Dworkin's basic strategy throughout the debate is, in any way, the fundamental strategy," he said. Legitimacy is ultimately determined not only by social facts, but by moral facts. In other words, the existence and content of positive law ultimately depend on the existence and content of moral law. Thus, this view directly challenges and threatens the positivism's description of the nature of the law as follows. That is to say, legitimacy must not be determined by morality but only by social practice (Shapiro, 2016, p.152).

2.2 John Finnis: "Practical Viewpoint" and "Focus Meaning"

In the first chapter of his masterpiece *Natural Law and Natural Rights*, Finnis focused on the distinction between the legal theory of evaluation and the descriptive legal theory. He argued that the description of the law can not be separated from the evaluation. "People generally think that if we want to engage in a kind of evaluation for the law as a social system, it is necessary to describe and analyze the value neutral of the system in which the facts exist in the first place. However, the development of contemporary jurisprudence suggests, and the reflection on the methodology of any social science, unless theorists themselves are involved in evaluating and understanding what is good for humanity and what is needed for practical reason, Otherwise, he will not be able to provide a theoretical description and analysis of social facts (Finnis, 2003, p.3)." It is not difficult to see that what Finnis opposed to is not a description of the law, but a pure description that is exempt from the moral evaluation.

Finnis questioned the methodology of descriptive legal theory on the basis of three arguments. First of all, he believed that both Hart's internal point of view and Raz's transcendent legal view are a "practical view" of the "function" of the facts that their theories sought to describe, which is the practical reason for giving members of society the right to abide by the law. Then he puts forward a second argument: descriptive legal theorists have the crux of different descriptions of facts that they are familiar with each other. It is because they judge which facts are important, meaningful, and what are not from different practical points of view; Therefore, in the choice of the characteristics of legal importance, there must be some kind of "focal meaning), which Aristotle calls "focal meaning" in the practical view held by descriptive law theorists. Only in this way can we distinguish between the "central case" and the "marginal case" of the law. Finnis's third argument is that both Hart's internal view and Raz's transcendent legal view are unstable and unsatisfactory, because both of them are based on reasons to maintain descriptive positions. They refused to find a central point of focus for their practical views, so that the choice of the important and meaningful features of the law is unclear, and it is impossible to clearly identify the central cases and marginal cases of the law (Finnis, 2003, p.12).

It may be possible to understand but not accept justifiable reasons and not to describe it in an evaluative manner, but what is its value? Finnis pointed out that if people were to say something universal about certain human affairs, then he would have to identify the concepts that better illustrate the situation of human beings. And it is more important to identify the alleged reasons for action to understand human behavior and opportunities. The neutrality or value of Hart's description is almost impossible in epistemology. "the general description and interpretation must depend on the shared evaluation defined between the author and the reader. By recognizing the functions, interests, pleasures, defects and remedies of society, Hart rightly made progress in every respect. Without resorting to value as a good reason for action, his

arguments against the descriptive nature of competition and interpretative legal theories are almost impossible to begin, let alone success (Zhu, 2012, p.83).” Finnis finally emphasized that the description of the concept of law by any law theorist cannot avoid the factors of evaluation, and it is also necessary to further establish the central example of his practical point of view, otherwise it will be difficult to identify the important features of the law (Finnis, pp.13-16). So for Finnis, the practical point of view of the central case is a moral one, and it is a moral view based on the rationality of practice.

2.3 Stephen Perry: Another Criticism of What Kind of “Internal View”

Another criticism to the descriptive legal theory came from Stephen Perry, however, Perry adopted a critical strategy and argumentation that was obviously different from that of Dworkin: first, he denied Hart and Raz’s descriptive method of explanation, and then pointed to the conceptual analysis method of their theory.

Perry argued that jurisprudence, like other social sciences, faces a special methodological challenge: it not only wants to portray social practice through descriptive methods, but also it is necessary to explain the normative orientation of the law that provides prudent justification for human behavior. Hart’s answer to this question is “internal point of view”, which can effectively explain the concept of “obligation”, and it can also be used as a critique of the predictive theory of obligation. The intrinsic point of view of social rules is that of the participants in group practice, and he accepts the rules as the criterion of guidance and criticism of behavior; The corresponding external view, referring to the point of view of the observer of the practice, did not realize the inherent aspects of the rule, that is, he accepted the rule not out of obligation but in order to evade punishment or sanction. Perry points out the inherent tension between “descriptive description” and “conceptual analysis” used by Hart’s descriptive jurisprudence, so it is necessary to choose between them. Descriptive methods are appropriate for scientific research, but the most appropriate method for jurisprudence, as a branch of practical philosophy, may be conceptual analysis. If jurisprudence is regarded as a scientific undertaking, so in order to obtain a descriptive moral neutral social theory, we must rely on an external point of view, which is directly contrary to the internal point of view under Hart’s social rule theory. As a result, attempts to construct a descriptive jurisprudence through a purely descriptive description will eventually prove to be nothing more than an alternative version of Hart’s criticism of realistic duty forecasting (Perry, 2006, pp. 129-130).

As far as the methodology of conceptual analysis is concerned, Perry thought that the idea of conceptual analysis is in fact not valid, and once this proposition has been established, Then the descriptive approach advocated by positivism law must be the same as the normative approach advocated by Dworkin. First of all, it is necessary to clarify that the conceptual analysis of law is not the concept of law in the daily sense, the interpretation and conceptual analysis of the meaning of the term, but the analysis of the inevitable attribute of the law on a metaphysical level. In other words, it gives a philosophical explanation of the normative nature of the law. In order to illustrate that the structure of the first rule and the second rule constitutes the essence of the legal theory and the important argument that the recognition of the rule as the cornerstone of the unity of the whole system of law, Hart further argues that both the social rule and the concept of the internal view associated with it make the analysis of the basic concepts of obligation and responsibility necessary. When it comes to conceptual analysis, what he shows in his mind may be a framework of conceptual analysis applied to our social behavior, so the method of conceptual analysis in Hart has become the only basis for judging whether a law theory is successful or not (Sun, 2013).

So we can see the tension between Hart’s method of conceptual analysis and his internal point of view. It is not possible to draw a convincing conclusion that the descriptive approach is possible only through conceptual analysis, which has a great explanatory power to the social practice, and it is not possible to draw a convincing conclusion that the descriptive approach is possible. Moreover, if a practitioner is committed to the cause of a conceptual analysis, he cannot ignore the present social practice, and once so, it will inevitably involve normative judgment and moral proof. In the following discussion, the question was further transformed into: what kind of “internal view” does Hart hold? Dworkin argues that judges, lawyers, and jurists must view law, construct legal theory, and adjudicate cases from an “intrinsic participant” perspective. The position and attitude of the internal participant means that the observer must share the value and attitude of the participant, which leads to a kind of hermeneutic legal theory. The perspective of “external observer” only leads to a duty prediction theory similar to that of Holmes. Does this mean that legal theorists can only choose between “internal participants” and “external observers”? Is there a third position that underpins Hart’s descriptive jurisprudence?

In fact, the key to the problem is how to recognize and look at the internal view. Dworkin’s internal view is not exactly the same as Hart’s internal viewpoint. “Hart’s version of the ‘internal perspective’ is a practical attitude accepted by the rules,” he said. That is, reflective critical attitude; The ‘internal perspective’ of the Dworkin version is a participant’s perspective. From this we can see that Hart took the research path of ‘participatory external perspective’, while Dworkin picked up the research path of participants’ internal perspective (Wang, 2011).” In addition, there are also commentators who argue that this

is a kind of "external view" that can be attributed to it. But it is a distinctive "non-extreme external view" (Shen, 2010, p.35). In essence, Hart's position of "participating but not sharing" is described by Raz as a "transcendent internal view". It transcends "extreme internal view" and "extreme external view", but is a special position between them.

Hart claims that his own internal view is different from Dworkin's version of "strong internalism," in which theorists do not share participants' values, beliefs, and attitudes. Perry believes that Hart itself misused the concept of internal view in criticizing Homs' theory of duty prediction. Holmes's "bad man idea", like Hart's positivism, paid equal attention to the law as a justification for human behavior. And it also uses the inner point of view. Hart's "cleverness" lies in the fact that he gave law a function from the point of view of theorists rather than practitioners. However, the biggest problem with this approach is that it fails in interpreting the normative aspects of law. To provide a full explanation of the normative nature of the law, theorists must give meaning to the law from the perspective of the participants, so that it leads to the result of the Dworkin-style internal hermeneutics. "Legal theory must incorporate an intrinsic view of the law, which is the view of the internal members or participants of the legal system, the descriptive legal theory, which is not a participant but an external observer, does not provide an appropriate explanation of this internal view. " (Dworkin, 1988, pp.13-14)

Then Perry came to the full conclusion of his descriptive jurisprudence: the most successful legal theory proved not to be purely descriptive and irrelevant, as Hart had argued. The legal theory must be normative or hermeneutic. But the law also has some inevitable attributes of non-normative and moral, and this multi-methodology approach can bridge the tension between descriptive methodology and normative methodology in jurisprudence (Perry, 2009).

3. THE TENSION BETWEEN DESCRIPTIVE METHODOLOGY AND NORMATIVE METHODOLOGY

The above criticism of descriptive methodology by the three representative scholars of normative methodology are enlightening. Our quest for the nature of the law cannot be separated from the value judgment of the importance of the law to us, which must be made from the perspective of the participants in legal practice to include and make understandable the belief of the participant, if not impossibility, but this is not the voice of the theorist themselves to present these beliefs and attitudes. Therefore, the legal theory which is constructed from the perspective of "understanding but not commitment" and "describing but not evaluating" is not a successful, reasonable and sincere legal theory. The legal theory should be based on description and aim at normativity.

Waldron has pointed out that not only is the law itself normative, but also the concept of law is normative, and it is impossible for one to use or understand it independently of its participation in a form of life, this form of life classifies political practice in different ways (Yin, 2016). It is clear that the theory of descriptive law runs counter to this important view that our interpretation and understanding of legal practice shapes our legal concepts, the life of the concept lies in practice and life form. The answer to "what is the law" contains the value judgment of "what the law should be", which cannot be separated decisively. As Dworkin put it to descriptive philosophical discourse, "an Archimedean approach is not going to work." Dworkin points out that Hart's position is a special case of the standard Archimedes idea. The methodological characteristic of Archimedes' idea is that although the researcher thinks that although he studies a certain kind of social practice, he does not participate in it, and this methodology presupposes the same distinction together (Wang, 2013, p.196).

In my view, the legal theory must proceed from the internal angle of view and must be proved by resorting to moral judgment. The defense of the internal angle of view of the legal theory urges us to think deeply about the relationship between philosophy of law, political philosophy and moral philosophy, because a kind of legal theory based on the internal angle of view contains the normative proof dimension. It will inevitably force us to turn our attention to the field of political philosophy and moral philosophy, in which Dworkin is a firm and unhesitant actor; Raz and Finnis regarded philosophy of law as a branch of practical philosophy. This means that legal theory is not a self-sufficient field, and moral or political considerations play an indispensable role in the conceptual analysis of law. We cannot therefore think that the subordinate relationship between these disciplines has eliminated the unique position and contribution of philosophy of law. On the contrary, it is a disrespect for the objective rules if we in order to pursue the so-called independent disciplinary status and objective research perspective, so that deliberately separated the relevant factors.

I also basically disagree with Dickson's point of view, although she rightly pointed out that it is too simple to divide the legal theory into "normative jurisprudence" and "descriptive jurisprudence". But she did not elaborate more clearly on why the judgment of importance was not moral. She did not explain why what was considered important by the general public was important, and why the nature of the evaluation criteria was not related to morality. Dickson's methodology of defending descriptive theory based on indirect evaluation proposition is not a successful attempt. The author believes that the legal theory is essentially a normative theory of moral

evaluation, and this theory must also contain a description of the object of understanding and evaluation-the law. The evaluation basis of the law theory still comes from the people's value idea of the essence of the law. Although the dispute over methodology is not meaningless, the debate about the substantive value of law is the core and the most important issue for legal people to pay attention to. When faced with questions such as "what should I do" and "what should we decide, execute, need, improve", only when we have a clear understanding of the facts about how the world works can only be answered. Therefore a good theory of description, both special and general, is needed, but description is always secondary, and the primary concern is to choose a good reason for action for your judgment. "should" is not from "reality", but only from some higher, ultimate premise of what should be.

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