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Constraining Judicial Discretion: Moral Reasoning, Democracy, and Judicial Justice

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Abstract

Judicial discretion has long been regarded as an indispensable institutional mechanism through which courts respond to the indeterminacy of legal rules and pursue substantive justice. In hard cases, such discretion is frequently exercised through moral reasoning, enabling judges to supplement positive law with normative considerations. Nevertheless, where moral reasoning is deployed erroneously, disproportionately, or without adequate regard to democratic legitimacy and the rule of law, it may give rise to legal conflict and undermine judicial justice. When moral reasoning extends beyond the boundaries of law and produces a structural imbalance between law and morality, constraints on judicial discretion become not only justified but necessary, albeit such constraints must be designed and applied with caution. Against this background, the article traces the intellectual development of judicial discretion and examines its normative expansion within the modern rule-of-law framework. It then analyses the influence of moral reasoning on judicial adjudication, clarifies the jurisprudential relationship between legal reasoning and moral reasoning, and identifies the principal modes through which moral reasoning operates within judicial decision-making. By assessing conflicts between moral reasoning and political principles, the article further elucidates the role of moral reasoning in the pursuit of judicial justice and re-examines the relationship between law and morality. Finally, it addresses the contemporary challenges confronting judicial discretion and explores how moral reasoning may be constrained to promote judicial justice.

Keywords: judicial discretion; moral reasoning; democracy and the rule of law; judicial justice; law and morality

1.Introduction

In a certain sense, human society may be understood as a moral community. Judicial reasoning can scarcely be conducted in a moral vacuum, nor can judges, when applying the law in the course of adjudication, avoid engaging—explicitly or implicitly—in moral reasoning. The existence of legal principles and political rules bears not only on the construction and operation of legal norms but also directly shapes legislative values and normative positions. Judicial justice, a core value pursued through adjudication, is deeply embedded in judicial practice. It is perhaps for this reason that, beyond the classical debate concerning the relationship between law and morality, controversies surrounding principles, moral reasoning, and judicial justice have increasingly at-

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tracted scholarly attention. Moreover, public expectations of the moral dimension of adjudication are often considerable. Where judges disregard prevailing moral concerns and rely exclusively on legal principles and political rules, the resulting decisions are likely to be perceived as failing to realise judicial justice. Judicial discretion exercised through moral reasoning (hereinafter 'judges' moral freedom') has long been regarded as an effective means to respond to the indeterminacy of legal rules and pursue substantive justice in the process of judicial decision-making. Nevertheless, a certain irony characterises contemporary practice. Moral reasoning is at times praised for filling normative gaps and manifesting judicial justice. At other times, it is criticised for transgressing legitimate boundaries and eroding the commitment to adjudication according to law. Against this backdrop, a series of fundamental questions arise: Can judicial reasoning ever be insulated from moral reasoning? By what means may morality be legitimately incorporated into adjudication? Does moral reasoning exercised by judges conflict with political principles or legal norms? And, finally, should judicial discretion exercised through moral reasoning be subject to constraint? This article seeks to address these questions.

Before examining the relationship among principles, moral reasoning, and judicial justice, it is necessary to revisit the enduring jurisprudential debate concerning the relationship between law and morality. Within the history of legal philosophy, this controversy has been most prominently articulated through the debate between H.L.A. Hart and Ronald Dworkin. Hart maintained that legal rules are of diverse types and that law does not invariably reproduce or satisfy moral requirements.[1] Dworkin, by contrast, argued that legal obligations arise only from legal standards and that law is necessarily connected to morality, rather than existing as an autonomous system divorced therefrom.[2] This article does not purport to explore the full complexity of the law–morality relationship. Instead, it draws on this enduring philosophical dispute to elucidate the mechanism through which judicial discretion operates in the pursuit of judicial justice. The judicial act of resolving disputes constitutes law itself.[3] Returning to the central concern of this article—the relationship among principles, moral reasoning, and judicial justice—scholars across jurisdictions have advanced markedly divergent views. To name but a few, Hart contended that where moral principles accepted by officials bear an authoritative relationship to the legal decisions they make, such principles may be regarded as possessing legal validity.[4] Dworkin famously denied that judges ever enjoy legal discretion in the strong sense, or that they are entitled to decide cases based on moral freedom. Even where explicit legal rules are exhausted, judges may nevertheless arrive at a right answer by invoking existing legal principles.[5] Raz, for his part, argued that the task of identifying the law is, to a significant extent, autonomous and does not require recourse to moral or other non-legal standards.[6] Berns, however, maintained that judicial decisions are invariably exercises of power and political acts, and that judges may, at times, attach particular weight to political and moral principles in order to realise substantive justice.[7] It is worth noting that, critical reflection upon weak legal systems and histories marked by the rule of persons rather than the rule of law has intensified scepticism towards moral reasoning in adjudication. A considerable number of scholars contend that moral reasoning exercised by judges attains legitimacy only where it is confined within clearly defined limits and subjected to legal value standards and political principles.[8]

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2.An Overview of Judicial Discretion and Moral Reasoning

Historically, the emergence and development of what may be described as judges' moral freedom in judicial adjudication have been driven by enduring practical exigencies. Law, being a construct devised by human beings, is inevitably constrained by the limits of human cognition and, accordingly, exhibits inherent indeterminacies. In the course of adjudication, judges have therefore come progressively to incorporate moral reasoning into the decision-making process. As social conditions evolve, so too do the demands placed on adjudication. Against the backdrop of divergent legal traditions, national systems, and social contexts, scholars have advanced a range of accounts concerning the role and scope of such moral reasoning within judicial discretion. An examination of the origins and historical development of this phenomenon serves to illuminate the reasons underlying these theoretical divergences and, moreover, provides a necessary foundation for the analysis that follows.

Theoretical debate concerning judges' moral freedom has persisted since classical antiquity. Over time, such theorisation has undergone several distinct phases. Aristotle is commonly regarded as having articulated an early foundation of this idea through his account of equity (epieikeia), arguing that '[l]aw cannot foresee all circumstances and that, in the pursuit of fairness and justice, a degree of judicial balancing is indispensable'. During the medieval period, however, substantial opposition to this view emerged. Certain schools maintained that law was complete and gapless, contending that judges could derive correct outcomes solely through syllogistic reasoning, without recourse to their own moral value judgements.

In modern and contemporary jurisprudence, an array of theoretical positions has developed, which may broadly be categorised into three approaches to judges' moral freedom. Conservative theorists, most notably Ronald Dworkin, contend that '[j]udges interpret law in accordance with its integrity as a coherent whole and, accordingly, possess only a limited scope for moral discretion'. By contrast, more radical scholars, including the prominent American legal realist Karl Llewellyn, have argued that '[j]udges do not merely apply law but, through the exercise of judicial discretion informed by moral considerations, actively participate in the creation of law'. An intermediate position, commonly associated with H. L. A. Hart, distinguishes between easy cases and hard cases, maintaining that in the latter judges must necessarily resort to moral balancing in order to resolve disputes. Viewed against its historical context, the position advanced by Oliver Wendell Holmes appears particularly persuasive. His oft-cited proposition that '[t]he life of the law has been experience rather than logic underscores the primacy of perception, social necessity, moral and political theory, and considerations of public policy over purely syllogistic legal reasoning'.[9] It thus becomes apparent that attitudes towards judges' moral freedom are closely intertwined with prevailing social conditions and legal traditions. Civil law jurisdictions, at certain stages of their development, have tended to rely on codification and resist the recognition of such moral freedom, whereas common law systems, grounded in empiricism and precedent, have been more inclined to acknowledge and endorse it. Notwithstanding these historical divergences, contemporary scholarship increasingly converges on the view that some measure of judges' moral freedom within judicial adjudication is both unavoidable and normatively defensible.

As regards the meaning of judges' moral freedom, no uniform definition has yet emerged within academic discourse. In the context of the common law, and with reference to Pattenden's account of judicial

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discretion, judges' moral freedom may be delineated along several dimensions. First, it denotes the rational engagement in moral reasoning at the evaluative stage of adjudication. Second, it refers to the authority to choose, on moral grounds, among possible outcomes where existing law fails to yield a determinate answer. Third, it has been understood as the pursuit of judicial justice through moral reasoning unconstrained by positive law. Fourth, it may be characterised as a latent power, involving the infusion of subjective judgement through moral reasoning in the decision-making process. Fifth, insofar as law is necessarily incomplete, judges' moral freedom is regarded as an element that ought to be institutionally safeguarded at the legislative level and deemed indispensable to adjudication. Finally, it encompasses the power of judges to employ moral considerations reasonably based on evidence and the submissions of the parties in the determination of facts. Taken together, judges' moral freedom in judicial adjudication must be exercised for the purpose of achieving judicial justice and must remain responsive to the circumstances of the case, provided that it is exercised in a reasonable and lawful manner. In addition, the views of Aharon Barak, former President of the Supreme Court of Israel, offer a further point of reference. According to Barak, '[j]udges' moral freedom consists in the selection of one option among two or more legally permissible alternatives, a choice which the judge may elect to adopt or decline'.

By contrast, jurisdictions grounded primarily in codified law, including those within the civil law tradition, tend to adopt a different perspective. One strand of scholarship maintains that judges' moral freedom is constrained solely by legal principles. Another contends that, in addition to such principles, the exercise of judges' moral freedom is also subject to political norms. A further line of argument emphasises the legitimacy of limited departures from positive law, asserting that judges' moral freedom should not be subject to strict constraints, provided that it is exercised to achieve judicial justice by means that remain reasonable and lawful within judicial adjudication.

From the perspective of contemporary constitutionalism, grounded in democracy and the rule of law, it is insufficient merely to compare and categorise the conceptions of judges' moral freedom in judicial adjudication; its underlying nature must also be examined. It is submitted that, first, judges' moral freedom is rooted in the professional responsibility inherent in the judicial role. Regardless of whether a case is straightforward or complex, and in light of both the duties of judges and the objective reality that legal norms do not correspond exhaustively to factual circumstances, judges are required to integrate moral considerations—at both the societal and personal levels—into their decision-making, provided that such considerations operate within the boundaries prescribed by law. As institutional representatives of justice, judges must also ensure that the exercise of such moral freedom is directed towards the realisation of justice. Second, judges' moral freedom constitutes a form of authority exercised under law. This entails that moral freedom in judicial adjudication represents an expression of judicial values and must derive from legal authorisation. It may neither transcend the limits of law nor be applied arbitrarily. Rather, any recourse to moral judgement must be carefully justified by reference to legal principles or the spirit of legislation, thereby providing a reasoned account of the manner and extent to which moral considerations are admitted into the adjudicative process.

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3.The Influence of Morality on Judicial Adjudication

3.1. Can Legal Reasoning Be Free from Moral Considerations?

Is morality necessary in legal reasoning? In the development of Western legal thought, this question has long been the subject of sustained debate between legal formalism and legal realism. Formalists maintain that legal reasoning is self-sufficient and does not require the involvement of morality. On this view, adjudication ought to remain non-moral in character. Legal realists, by contrast, accord a central role to moral considerations, contending that judges exercise an unrestricted form of moral freedom and need only reach outcomes that accord with their own moral values and preferences.

In fact, both positions tend towards extremes and do not withstand careful scrutiny. In this context, reference must also be made to the well-known debate between Ronald Dworkin and Richard Posner. Dworkin incorporates moral philosophy into his theory of adjudication and argues that, '[i]n the course of judicial decision-making—particularly when confronting hard cases—judges must inevitably revert to principles of political morality in order to secure the best moral justification for the outcome'. Posner adopts the opposing stance, maintaining that '[m]orality is of little assistance to legal reasoning and that not all legal questions can ultimately be reduced to moral ones'. In many instances, the core of the dispute lies instead in the determination of facts.

Does judicial decision-making in legal reasoning require the use of moral considerations? There are compelling reasons to suggest that moral considerations cannot be dispensed with. Judges, as human beings rather than infallible arbiters, inevitably possess their own moral outlooks and modes of thought. This element cannot be entirely eliminated. It is generally acknowledged that the essence of legal reasoning lies in the use of legal reasons to render judicial outcomes justified and reasonable. Within this process, however, the precise role played by the judge remains a critical question. Given the strong binding force of legal obligations and the comparatively weaker binding force of moral obligations, a more persuasive view appears to be the following. Judges ought, as a matter of principle, to derive conclusions from existing legal norms. Where, however, such norms suffer from substantive value deficiencies or are altogether absent, judges may resort to moral considerations in their reasoning. In other words, this constitutes a form of moral authority conferred upon judges by law itself.

A complete account of legal reasoning necessarily entails a combination of 'reasoning about law' and 'reasoning according to law'. This process involves both the identification of the applicable legal norms in a concrete case and the search for a justified outcome. At a theoretical level, neither aspect can be entirely separated from moral considerations. On the one hand, the very nature of legal reasoning precludes its realisation through professional knowledge and technical skills alone. On the other hand, the existence of judicial discretion entails that judges necessarily possess the authority to correct legal rules or to fill legal gaps through moral considerations.

The 'rule-oriented, concept-oriented, and autonomy-oriented' features of legal reasoning distinguish it from other forms of reasoning. Although these features appear, at first glance, to be concerned solely with

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law itself, judicial practice demonstrates that judges frequently rely on moral reasons in adjudication. This reliance does not, in itself, undermine the objectivity of legal reasoning. From an alternative perspective, the process of legal reasoning may be understood as a unity of rule-based reasoning and moral considerations. Moral considerations operate within legal reasoning in a manner distinct from that of legal rules. The certainty and exclusivity of legal rules enable their direct application, whereas moral considerations lack such operative force. Legal reasoning, however, is inherently oriented towards both formal and substantive dimensions. Legal rules secure formal legality, whereas moral considerations shape the range of acceptable outcomes. In this respect, moral considerations significantly enhance the legitimacy of judicial decisions and their acceptance by the public, thereby fulfilling the substantive requirements of legal reasoning.

3.2. How to Integrate Morality into Judicial Adjudication?

Although judges may inevitably rely on moral considerations in the course of legal reasoning, such reliance is by no means unregulated. In practice, increasingly mature legal norms can resolve the vast majority of straightforward cases and satisfy the demands of judicial fairness. It is typically only a small number of hard or complex cases, or cases that give rise to significant social controversy, that require judges to exercise moral considerations with particular caution. In certain specific circumstances, judges may therefore be compelled to resort to moral considerations to uphold fairness and justice within the law. This gives rise to a further question: how ought morality to be introduced into judicial adjudication? In general, this may be achieved through two principal channels, namely legislation and adjudication.

At the legislative level, considerable controversy persists. Opponents argue that the primary function of legislation is not to guide citizens towards moral virtue and that legislation inevitably involves multiple value orientations that are difficult to rank. On this view, legislative bodies ought not to engage in moral legislation by introducing morality into judicial adjudication through statutory means, lest they become entangled in public controversy. By contrast, scholars who support the legislative incorporation of morality into judicial adjudication generally maintain that encouraging moral conduct has long been a tradition of social development and that legislatures bear a responsibility to promote the moral standards of society. From an objective standpoint, introducing morality into judicial adjudication through legislative means offers notable advantages, particularly in the resolution of hard cases. First, legislatures incorporate moral considerations into adjudication through collective deliberation within a democratic framework. This implies that the resulting position has, at a minimum, secured the assent of a majority and thus rests on a relatively strong basis of legitimacy. Second, legislatures possess a broad scope of authority, and their decisions tend to combine rationality with practical justification. Such decisions are typically formulated based on empirical investigation and accumulated experience and are therefore more readily accepted by the public. In addition, legislative incorporation may maximise convenience and efficiency at the stage of implementation, relieving judges of certain procedural burdens and practical concerns.[12] That said, the legislative approach is not without its limitations. As Dworkin has observed, '[l]egislatures that seek to provide general solutions are inevitably subject to substantial pressures'. Moreover, morality evolves alongside social development, and legislation may struggle to respond effectively to the changing demands of moral practice.

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Owing to the inherent lag of legislation and the limitations of normative rules, reliance on legislative means alone to introduce morality into judicial adjudication is insufficient. In such circumstances, recourse must be made to the judicial process. Compared with legislators, judges, by virtue of their institutional role, are often better equipped to engage with moral issues and possess certain advantages that legislators do not. [13] First, judges typically operate within specialised fields of adjudication and handle particular categories of disputes on a regular basis. Thus, they are more familiar with, and more sensitive to, the controversies arising within those fields and are better positioned to address hard cases involving moral disagreement. Second, certain morally contentious issues that arise in judicial practice are, by their nature, individual cases. Such issues are not well suited to the formulation of general rules, and their incorporation through judicial precedent allows for greater flexibility. In addition, the moral character of judges differs in important respects from that of ordinary individuals. It exhibits a degree of professional specificity shaped within the judicial environment. Through sustained judicial practice over time, judges gradually cultivate a form of professional moral reasoning that informs their adjudicative function.

In summary, the coordinated use of legislative and judicial pathways appears to be the most appropriate means of introducing morality into judicial adjudication, as it enables the resolution of hard cases involving moral disputes of differing natures. Whether through an 'external' approach—under which judges first seek legal grounds for moral judgements and subsequently articulate those judgements in the language of law—or through an 'internal' approach—whereby judges engage with the parties on a given matter and form moral judgements based on a shared understanding derived from communication—both methods can address morally contentious issues of public concern. They may serve to contain moral risks, alleviate social pressures, and respond to the demands of judicial justice. Law is at once normative and practical. A distance inevitably exists between legal norms and social reality, and the scope for judicial engagement remains substantial. In this sense, the vitality of law lies not solely in the refinement of legislation, but also in the quality of adjudication.

3.3. How do Moral Considerations Operate within Legal Reasoning?

As noted earlier, morality may enter judicial adjudication either directly, by being expressly reflected in the reasoning section of a judgment, or indirectly, where a judge's rational moral judgement is not explicitly articulated in the decision. This raises a further question: what role do moral considerations play in the process of legal reasoning? From a typological perspective, their functions may be broadly classified into three categories.

The first type is that in which moral considerations guide the outcome of adjudication. This approach resembles a form of consequentialist legal reasoning, in which morality operates as an extra-legal factor concerned with outcomes. Judges initially form a provisional judgement based on moral intuition and subsequently seek legal grounds to support that judgement, thereby constructing a complete chain of legal reasoning and arriving at a judicial decision. As a mode of reverse reasoning, this type of adjudication may be divided into an initial stage of anticipatory judgement and a subsequent stage of selection and adjustment. [14] In practice, moral considerations constitute the decisive factor in determining the outcome, while law performs a corrective, or at most a justificatory, function.

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The second type is that in which moral considerations serve as a basis for adjudication. Within a comprehensive legal system, both rules and principles function as important vehicles for the expression of moral values. Whether applied through direct deduction or indirect reasoning, they ultimately give effect to moral considerations. Legal principles, in particular, embody certain political values. Their application as a whole represents a concrete manifestation of the unity between legal judgement and moral judgement. As a result, the processes of interpretation and construction necessarily depend on moral considerations. Where the direct application of statutory law would give rise to value deficiencies, judges may engage in law-developing activity beyond enacted law. In such circumstances, reliance upon value-based judgement enables adjudication to fill these gaps.[15] A legal system is inevitably open-ended. Judges move between settled law and unsettled law. Where a particular case falls within the domain of unsettled law, judges may develop the law through recourse to moral, social, and other non-legal considerations.

The third type is that in which moral considerations reinforce the explanatory dimension of legal reasoning. In such circumstances, moral considerations do not operate as the direct basis for adjudication. Rather, they perform a rhetorical function by lending support to the ultimate conclusion. For judges, moral reasons of this kind, much like political or economic reasons, possess an essentially legal character. They serve to demonstrate the consistency between the final outcome of adjudication and the applicable law.[16] In contemporary society, assessments of whether a judicial decision is lawful and reasonable are often influenced by whether its outcome accords with prevailing moral standards. Judges should therefore exercise caution in determining the proper place of morality within judicial decision-making.

Given that social public morality constitutes a set of norms generally expected to be observed by members of society, recourse to such morality to strengthen the reasoning of judicial decisions may serve a constructive function. In addition, public opinion that has been carefully screened may, subject to appropriate limitations, be incorporated into judicial adjudication. Such opinion differs from ordinary popular sentiment in that it reflects, to a certain extent, the moral demands of a particular historical moment.

4.Principles, Moral Considerations, and Judicial Justice

4.1. The Conflict between Moral Considerations and Democracy and The rule of law

Unlike existing legal rules, moral considerations are applied at the judge's own initiative in the course of adjudication. Their use therefore entails inherent risks. The difficulties arising from what may be described as the creative application of law in judicial decision-making tend to become most apparent when such application conflicts with political principles. In such circumstances, the challenge posed to judicial justice is particularly acute. This raises a fundamental question: when judges base their judicial decisions on moral considerations, does this practice ultimately conflict with democracy and the rule of law?

The interaction of multiple domains and competing value orientations may lead to divergent outcomes. There is no absolute answer to this question, at least at present. The response depends to a considerable extent on the nature of the moral considerations relied upon by judges, as well as on the degree to which they are employed. It is also shaped by the circumstances of individual cases and the differences among

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judicial systems. The rule of law, understood as equality before the law, constitutes a fundamental foundation of governance in modern society. All persons are subject to the law. The purpose of the rule of law is to restrain power and to safeguard freedom and rights. It maintains social order through legal institutions and normative rules. Across different jurisdictions, the rule of law admits of multiple interpretations. From a jurisprudential perspective, it requires judges to decide cases in accordance with established legal norms and precludes personal moral considerations from becoming the dominant basis of adjudication. In practice, however, as discussed above, where applicable legal rules are absent or suffer from value deficiencies, judicial reliance on moral considerations does not necessarily depart from the rule of law. Moral considerations do not, in such cases, function as the governing rationale. More often, they play a supplementary or gap-filling role. Although political principles constitute binding directives, moral considerations may, in certain contexts, provide more appropriate guidance. As a form of value-based assessment, they may contribute to more satisfactory legal outcomes, provided that they are subject to appropriate regulation in accordance with the traditions of the common law. However, it cannot be denied that situations do arise in which judges' moral considerations give rise to extensive discretion and generate significant tension with democracy and the rule of law. Whether through erroneous application or excessive reliance, moral considerations may pose serious challenges to legal systems and judicial practice grounded in political principles. Such developments may provoke social criticism and even undermine legal order. Civil law jurisdictions, with Germany as a prominent example, have long maintained that all judicial activity must be founded on objective law and remain subject to its continuous constraint. This methodological commitment occupies a central position and is not regarded as susceptible to displacement by moral considerations.

In certain cases, judges may engage in legal reasoning and render judicial decisions based on moral considerations in addition to existing legal rules, without necessarily coming into conflict with democracy and the rule of law. The answer may appear to be equivocal. Yet, in light of judicial practice, such an answer may be a reasonable one. The nature of the case, the legal system in question, and the historical and social context all matter. The type of moral considerations involved, as well as the extent to which they are employed, constitute variables that inevitably influence societal assessments of judicial outcomes. In other words, where judges are able, in specific circumstances, to maintain a delicate balance between adherence to democracy and the rule of law, the use of moral considerations in adjudication, and the fairness of the final outcome, such controversies are unlikely to arise. By contrast, the application of moral considerations in situations where they conflict with political principles is highly likely to trigger systemic risks to legal order. On the one hand, it undermines the determinacy of principles. On the other hand, it weakens the predictability and evaluability of judicial outcomes. Judges should therefore exercise caution when relying on moral considerations in legal reasoning and judicial decision-making. Among extra-legal factors, morality bears a closer affinity to law than most. Law itself incorporates a substantial number of moral requirements, and many legal norms have evolved from moral norms. In this sense, a certain form of moral consideration may assist judges in adjudicating cases in accordance with law.

4.2. The Role of Judges' Moral Considerations in Judicial Justice

When judges rely on moral considerations in adjudication, this may constitute a challenge to existing

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political principles. The question then arises whether such judicial outcomes will be accepted by the public. A related question is whether judges' moral considerations can deliver judicial justice. These are, in effect, questions that judges themselves must confront and answer. Where a result reached by departing from existing legal rules fails to reflect judicial fairness, the use of moral reasons in legal reasoning loses its significance. Judicial practice suggests that cases warranting judicial intervention through moral considerations have, in general, produced relatively positive social outcomes. In such cases, judges have not imposed morality outside the law. Rather, they have identified a more appropriate space for adjudication within the normative framework, based on fact-finding and value assessment. However, it must also be acknowledged that there are individual cases in which judges have relied on distorted or erroneous moral considerations, resulting in outcomes that fall short of expectations and attract substantial controversy. In general, whether judicial justice is achieved depends largely on judges' legal consciousness. Such consciousness is shaped, often imperceptibly, by social and personal environments. This leads to differences in judicial reasoning and evaluative standards, as well as divergent understandings of moral value. It may therefore be the case that decisions widely regarded by the public as unreasonable or even absurd are nevertheless perceived by the deciding judge or judges as realising judicial justice.

It is worth noting that judicial justice does not depend solely on judges' reliance on moral considerations. Law itself is commonly regarded as a vehicle of justice, and decisions reached through the application of existing legal rules are, in most cases, capable of adequately realising this objective. Legal reasoning constitutes a direct and formal method of pursuing fairness. By contrast, interest-balancing represents an indirect and substantive method of pursuing justice. The optimal outcome of judges' use of moral considerations lies in a decision that achieves unity between legal effect and social effect. These two effects may be understood as two sides of the same coin. In terms of the realisation of judicial justice, they should be aligned. However, this is not always the case in practice. This raises a further question: where a judicial decision grounded in moral considerations produces divergent legal and social effects, how should judges choose to realise judicial justice? A preferable approach is to accord priority to legal effect. In any event, when judges rely on moral reasons in adjudication, they do so within the legal framework and based on legal grounds and evidentiary foundations. Giving precedence to legal effect enables the greatest possible realisation of formal justice. Social effect may be regarded as an extension of legal effect, or, in other words, as an expression of substantive justice. The ultimate aim of adjudication is to achieve the best possible social effect and realise substantive justice. This, however, presupposes that legal effect occupies the primary position, forming the foundation of the normative structure. Judicial actors should therefore recognise that, within the context of modern constitutionalism, neglecting the relationship between legal effect and social effect—while focusing exclusively on the moral justification of decisions and their directional influence on outcomes—risks weakening the legal character of judicial decisions. To achieve judicial justice, judicial adjudication should adhere only to that part of morality which remains consistent with the law.

4.3. Revisiting Law and Morality

Moral considerations occupy a place within judicial decision-making, and legal reasoning cannot entirely exclude moral factors. The nature of judicial work leaves room for moral considerations. In hard cases, such

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considerations may open new avenues of thought for judges.[17] This article does not seek to continue the long-standing philosophical debate on the relationship between law and morality. Rather, it aims to examine the boundary between moral and legal adjudication within the framework of moral considerations and judicial justice. The relationship between law and morality is both complementary and conflicting. Thus, a boundary between legal judgement and moral judgement is inherent in judicial decision-making.

Admittedly, judges have come to recognise the role and value of moral considerations. Simultaneously, they must remain vigilant regarding the potential risks of misuse or overuse. Moral reasons are, by their nature, extra-legal reasons. The use of moral considerations in adjudication often carries a strong element of interest-balancing. Where moral reasons dominate or even replace legal reasons, judicial outcomes inevitably lose objectivity and fairness. By contrast, where the boundary between moral adjudication and legal adjudication is properly understood, and morality is appropriately situated within judicial decision-making, several benefits may follow. The sources of judicial reasoning may become more diverse. Judicial decisions may acquire greater ethical integrity and institutional dignity. Social public morality may also be more effectively incorporated into adjudication, enriching the depth and normative resonance of judicial outcomes and enabling the public to experience justice in a more tangible manner. This leads to the final set of questions addressed in this article. What risks and dilemmas do judges encounter in practice when applying moral considerations? What mechanisms or responses may enable judges to realise the value of moral considerations and to exercise moral freedom properly, rather than drifting towards extra-legal moral adjudication?

5.The Practical Challenges of Judges' Moral Freedom and Possible Responses

5.1. The Necessity of Regulating Judges' Moral Freedom

As noted above, conflict arises where judges apply moral considerations erroneously or in a distorted manner and fail to maintain a balance between democracy and the rule of law, on the one hand, and judicial justice, on the other. Whether judges can employ moral considerations reasonably and effectively directly affects the legitimacy and public acceptance of judicial outcomes. In practice, however, moral assessment that is left unregulated often gives rise to a series of risks and difficulties. This prompts a further question: can judges' moral freedom be appropriately regulated so as to resolve such conflicts and enhance judicial credibility? The answer is in the affirmative.

First, judges' moral freedom, unlike existing legal rules, is neither objective nor determinate. It is inherently subjective and pluralistic. It is thus difficult to regulate in a systematic manner, and instances of misuse or erroneous application frequently arise. The requirements of judicial justice dictate that judges' moral freedom must be limited in scope and extent. It should be exercised within the existing legal framework and serve as an optimal means of resolving hard cases. Ideally, judges should place emphasis on invoking the morality of duty, namely those moral requirements generally applicable to all members of society, in order to better realise justice at the societal level.[18] However, uncertainty arising from the judicial environment,

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historical context, and policy orientations, combined with the subjective indeterminacy of judges' legal consciousness, often results in an excessive degree of discretion when judges employ moral considerations. Certain forms of corruption within the judicial sphere may be attributed to the abuse of such moral freedom. These phenomena represent a serious departure from the fundamental principles of a society governed by the rule of law and, ultimately, risk eroding public confidence in law itself.

Second, some judges, out of concern about erroneous or mistaken judgments and the prospect of accountability, or in an attempt to reduce their own institutional burden, resort to moral considerations as a tool to justify selecting the median point within the scope of discretion as the outcome. Such an approach is often presented as a form of moral judgement. In substance, however, it departs from the requirements that judicial decisions be reasonable, lawful, and appropriate. Existing legal rules generally embody tolerance and flexibility. They confer judges with a margin of discretion in areas such as sentencing ranges, the scope of compensation, and the amount of fines. Judges are expected to analyse the circumstances of individual cases and to arrive at the most appropriate outcome. In practice, however, to secure acceptance by both parties and minimise the risk of personal liability, several judges adopt a passive approach and directly select the 'middle value'. This runs counter to the original purpose of introducing moral considerations into judicial adjudication and is difficult to reconcile with the demands of judicial justice.

Third, the predictability of judicial decisions constitutes a practical requirement of judicial justice. It conveys stable regulatory signals to society and sustains the order of a society governed by the rule of law. Judges' exercise of moral freedom should comply with this requirement. In practice, however, factors such as judges' moral dispositions, levels of knowledge and skill, experiential biases, and the pressure of public opinion in the digital age may lead to the irrational use of moral considerations. This, in turn, may result in decisions that depart from common social understanding and lose their predictability. The most typical manifestation of this problem is the phenomenon of 'different judgments in similar cases'. Freedom, properly understood, consists merely in doing what one ought to do, that is, what the law permits. Where the use of moral considerations causes judicial decisions to deviate from the essential requirements of law, such freedom ought to be constrained.

Admittedly, imposing limits on judges' moral freedom is not the only means of addressing conflicts within the legal system. It is, however, among the most efficient. Such limitation must nonetheless be approached with caution, so as to balance social values and to realise judicial justice.

5.2. The Value of Judges' Moral Freedom and Its Proper Exercise

As discussed above, where serious conflict arises with political principles, a degree of limitation may be imposed on judges' moral freedom. Such limitation must, however, be exercised with caution. The function of moral considerations lies in balancing competing values and in realising judicial justice. Any restriction placed on judges must therefore avoid disrupting the balance between moral considerations, democracy and the rule of law, and judicial justice. In all circumstances, the pursuit of fairness and justice within law must remain the guiding objective. Moral freedom may be confined within a defined scope to prevent social conflict arising from competing value orientations. The precise status and form of such limitations depend,

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to a considerable extent, on the legal system, historical context, and prevailing social culture. This raises a further question: may such 'appropriate' limitations extend beyond the moral principles recognised by judges themselves? The author adopts a neutral position. Each situation must be assessed on its own merits. Influenced by a range of factors, judges do not share uniform legal consciousness or moral understanding. Where a judge's moral perception is erroneous or departs markedly from prevailing social moral standards, substantial restrictions on that judge's moral freedom may be justified. In such cases, limitation may even extend beyond the moral principles endorsed by the judge, as those principles are likely themselves to deviate from mainstream values. Within the framework of modern constitutionalism, the moral understanding held by the majority of judges generally remains within accepted bounds. Even where instances of improper application arise in practice, the resulting decisions may nonetheless reflect the underlying values of the judicial system. Appropriate limitation may help to correct such deviations. If, however, restriction were to extend beyond the moral principles recognised by judges, the intervention of moral considerations would lose its significance. Nor would it resolve existing gaps in law or deficiencies in value. Such an approach would amount to addressing secondary concerns at the expense of fundamental ones. It is difficult to offer a definitive answer to this issue. A simple affirmative or negative response would be inadequate. Law develops rapidly, and social moral conceptions evolve continually. The most appropriate response, therefore, is that the matter depends on the circumstances. Judges' moral freedom is, in this sense, a form of constrained freedom.

It is possible to address the risks associated with judges' moral freedom through certain measures and to impose 'appropriate' limitations on its exercise. First, guidance may be provided by reference to prevailing social values. Such guidance can orient judges' moral judgement and help ensure that judicial outcomes embody social consensus and accord with the values of judicial justice under conditions of economic development and social transformation. Second, while granting judges the authority to employ moral considerations in adjudication, corresponding duties and responsibilities should be imposed. Judges should be required to articulate, in an open and transparent manner, the otherwise implicit moral judgements underlying their decisions. This enables the public to perceive judicial caution and rational deliberation. In response to instances in which judges rely directly upon moral intuition, Wasserstrom's second-order justificatory theory, which accords weight to both law and morality, provides a useful framework for addressing this concern. [19] Third, greater emphasis should be placed on enhancing judges' legal competence and moral character. This may be achieved through legislative measures that prescribe standards of judicial professional ethics, as well as through regular education and training programmes. Such measures enable judges to remain informed of evolving knowledge, skills, and social moral conceptions. In addition, developments in science and technology, particularly the emergence of artificial intelligence, offer new opportunities for addressing the risks associated with judges' moral freedom. Consideration may be given to the use of AI systems based on big data algorithms to assist judges in applying moral considerations in adjudication. The morality relied upon in judicial decision-making must be social public morality, rather than individual intuition or emotion. Meanwhile, attention must be paid to the evolving nature of morality. The introduction of critical morality as a standard may assist in revealing the underlying substance of moral judgement and in ensuring that genuine moral considerations enter judicial adjudication. Whatever form such limitations may take, they must

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operate within the legal framework. Only in this manner can adjudication respond appropriately to morality, allow moral considerations to perform their proper function, and give full effect to judicial justice.

6.Conclusions

In an ideal setting, there exists a one-to-one correspondence between the facts of a case and existing legal rules, such that judges may arrive at objective and reasonable conclusions through legal reasoning alone. However, gaps in the law and competing value demands render this ideal unattainable in certain circumstances. Judges are therefore sometimes required to engage in moral reasoning to balance interests and pursue judicial justice. As with any form of power or discretion, the exercise of moral reasoning requires prudence. Where moral reasoning extends beyond the boundaries of law and gives rise to value conflicts, constraints upon judicial discretion may be justified. Nevertheless, such constraints must be imposed with caution. In this respect, the judiciary may adhere to a form of negative activism, exercising a limited yet meaningful role within appropriate bounds.[20] Whether such 'appropriate' constraints may extend beyond the moral principles endorsed by judges themselves must ultimately be assessed on a case-by-case basis. In general, the role played by moral reasoning in adjudication in the pursuit of judicial justice should be affirmed. This does not imply, however, that recourse to moral reasoning constitutes the optimal or preferred means of achieving fairness and justice. Within the framework of democracy and the rule of law, moral reasoning does not occupy a formal or independent normative status.[21] Strictly speaking, proficiency in the use of moral reasoning in adjudication is not a necessary criterion for evaluating whether a judge is a 'good' judge. Rather, judges should proceed from the existing legal framework, treat necessity as the threshold condition for invoking moral reasoning, and employ such reasoning rationally, cautiously, and proportionately. Judicial decision-making ultimately demands intellectual honesty and practical realism. Judges must approach their demanding responsibilities with sobriety and diligence, faithfully implementing both legal requirements and the moral commitments embedded within law. Only through such grounded and disciplined adjudication may justice be genuinely realised.

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