

An Integral Approach to Constitutional Interpretation

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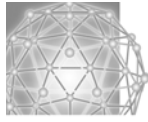
The following article outlines the major approaches to constitutional interpretation and explains how either approach on its own ultimately leads to a narrow and incomplete understanding of the law, which ignores the rich reality that both interior and exterior perspectives carry. The author will introduce Integral Legal Theory as a method of interpretation that will allow each perspective its day in court while offering coherence to a jurisprudence gone slightly mad.

Introduction

In the U.S. alone, there are at least a dozen different methods of interpreting the law. These styles are diverse and most reject the validity of the other. For example, in February 2006, Justice Antonin Scalia, responding to the notion that the constitution is dynamic and not static, was reported to say, “You would have to be an idiot to believe that. The constitution is not a living organism. It is a legal document. It says some things and doesn’t say others.”¹ Scalia, an “originalist” in his interpretive approach, sees little worth in any style that relies on using morals and values when interpreting the law. Alternatively, Professor Ronald Dworkin in his many books and articles, lays out an equally coherent argument on why a judge ought to use subjective, moral principles set by society in deciding a case. The division between the two is alive and well with their followers writing law review articles every year that defend their particular approach as superior to the other. The rift continues, and we are left to choose sides.

The deeper truth, however, is that each of these approaches tells only a part of the story regarding the legal issue in question. Scalia represents a more empirical, text-driven approach to legal interpretation while Dworkin subscribes to a more subjective, interior-driven approach. Either approach on its own ultimately leads to a narrow and incomplete understanding of the law (no matter the interpretive style), which ignores the rich reality that both interior and exterior perspectives carry. The following article will introduce Integral Legal Theory as a method of interpretation that will allow each perspective its day in court while offering coherence to a jurisprudence gone slightly mad.

To understand the basic principles of this approach we will employ American philosopher Ken Wilber’s “all-quadrant, all-level” model (otherwise known as Integral Theory) to the interpretation of law. Integral Theory is extraordinary in that its purpose is to recognize and take into account the various perspectives at play in any situation and not reduce one perspective to another. Each is recognized for its partial piece of truth that it provides, no more or less. When each perspective is taken into account simultaneously, a clearer and therefore better



understanding of the situation is instantly available to the interpreter. As a result, justice can be better served.

Integral Theory

Ken Wilber is considered by many to be the world's most comprehensive philosopher. He is America's most translated academic writer. Having written twenty-three books (first at age twenty-three) published in over thirty languages, Wilber's body of work reminds us that he is an intellectual and spiritual force to be reckoned with. Because Integral Theory is transdisciplinary by nature, it has already been applied to ecology, business, literature, art, medicine, and music (to name a few) with resounding meaning and success. What is the Integral approach? According to Wilber:

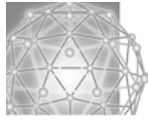
An integral approach does not wish to commit subtle reductionism; it does not wish to reduce interior holism to exterior holism (but rather includes them both). It does not reduce all art, beauty, morals, and consciousness to a flatland system of processes, data bits, neurotransmitters, a web of life, or any other system of holistic objects. It wishes to include, in a nonreductionistic fashion, the interior domains of subjective and intersubjective waves and streams and states, spanning body to mind to soul to spirit, even though the latter all have objective correlates of various sorts that can (and should) be approached in third person, scientific, it-language terms.²

Integral, in essence, means acknowledging the subjective and objective truths of every circumstance. In addition, the Integral map also includes five elements of reality that are at play in every situation. These include quadrants, levels, lines, states, and types. For the purposes of this article, I will focus only on how quadrants and levels help us more cogently interpret the law. In future pieces, I will expand the application, using quadrants, levels, lines, states, and types in a full-blown Integral Legal Theory.

The Four Quadrants

The Integral model recognizes that there are at least four dimensions to every occasion: the interior and exterior of the individual and the collective. Thus, a four-quadrant map of reality is created with the Left-Hand quadrants representing the interior aspects of the individual and collective while the Right-Hand quadrants represent the exterior aspects. Each quadrant uses its own injunctive examinations of reality to elucidate its partial truth.

For instance, if it snowed yesterday, you could look at this from four perspectives, each telling some important aspect of the phenomena of snow. The snow can be measured objectively with the naked eye or under a microscope. This is the Upper-Right quadrant view or "It" aspect of snow. This perspective, however, says nothing of how I *feel* about the snow or how it is subjectively *experienced* in thoughts and feelings. This represents an Upper-Left quadrant view



or the “I” perspective of the person experiencing the snow. And yet the snow is also *collectively valued* in a specific way depending on the particular culture where the snow fell; this is the Lower-Left quadrant or “We” perspective. Finally, there is the weather *system* the snow was a part of, which is the Lower-Right quadrant aspect of the snow.

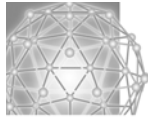
How does this relate to interpreting the law? The legal document in question can be looked at from the four quadrants as can the person’s process for interpreting the document. Taking into account the interpreter and the interpreted, we have at least eight perspectives that can be accounted for. This will allow us to fully recognize the subjective and objective nature of a given legal occasion and include each perspective in a comprehensive Integral Legal Theory.

UPPER LEFT	UPPER RIGHT
Self and Consciousness	Brain and Organism
Interior-Individual <i>Experiences</i> Subjective Truthfulness	Exterior-Individual <i>Behaviors</i> Objective Truth
I	IT
WE	ITS
Interior-Collective <i>Cultures</i> Intersubjective Justness	Exterior-Collective <i>Systems</i> Interobjective Functional Fit
Culture and Worldview	Social System and Environment
LOWER LEFT	LOWER RIGHT

Figure 1. The Four Quadrants

The Quadrants Applied to Styles of Legal Interpretation

As a quick review, we have recognized that philosophical disagreements exist among the various modes of constitutional interpretation. This discrepancy stems partly from the fact that each constitutional perspective often has little appreciation for the other. Such narrowness blinds one from the reality that legal matters require a subjective and objective account to be fully comprehensive. Integral Legal Theory demands both, using an all-quadrant, all-level approach. In the following paragraphs, I will identify various legal theories and their natural placement within the quadrants. By doing so, we are acknowledging the partial truth of each legal theory while recognizing its contribution for what it is—nothing more, nothing less. For this article, we will work with four legal interpretive models.



Upper-Left Quadrant

The Upper-Left quadrant focuses on the subjective reality of the individual, including their thoughts and feelings. One legal approach that looks within is the “original intent” school. Original intent is an interpretive style that focuses on what the original authors meant when they created a particular law. The original intent approach argues that to understand the law you must understand the maker of the law. The major focus in this approach is the identification of the subjective personal thoughts of the writers of a document. Robert Bork, one of America’s conservative intellectual and legal giants, is an advocate of the original intent approach to interpreting the Constitution. Here is Judge Bork’s view in his own words:

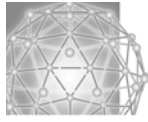
What is the meaning of a rule that judges should not change? It is the meaning understood at the time of the law’s enactment. All that counts is how the words used in the Constitution would have been understood at the time...The search for the intent of the lawmaker is the everyday procedure of lawyers and judges when they must apply a statute, a contract, a will, or the opinion of the court.³

Bork further states, “The interpretation of the Constitution according to the original understanding, then, is the only method that can preserve the Constitution, the separation of powers, and the liberties of the people.”⁴

The original intent method is valued in the context of an Integral approach because it makes sense to want to understand the intentions of the original writer(s). Uncovering the original intent and taking it into account when interpreting is a fundamental part of Integral Legal Theory, it just is not dispositive.

It is important to remember, however, that the original intention of the author is not isolated and independent. It subsists within contexts, most specifically within the three other contexts or quadrants already mentioned. For one, individual thoughts always occur within the context of a culture. Furthermore, original intent may not be relevant to the current question at hand. For example, contemporary search and seizure law deals with questions involving the internet and computers, questions which were not even contemplated until the late twentieth century. To rely exclusively on the thought process of people alive over two hundred years ago would be absurd, in this instance. Not to mention that the founding fathers, although incredibly wise, still neglected to include women, Native Americans, or African Americans. Which is to say that the original intent method is not the final word on legal interpretation.

Nor does original intent take into account that the person interpreting the document plays a role in the process, as well. The interpreter, of course, is influenced by their own brain chemistry, thoughts, morals, intelligence, emotions, culture, and systems of governance that they are a part of (i.e., the quadrants). To focus only on the intent of the author would deny this complex reality. Professor Dworkin’s “law as integrity” approach is an example of a theory that understands the importance of the interior perspectives of the individual and collective as they apply to the interpreter.



Even if we ignored the fact that original intent exists within contexts, there are other issues to consider. For example, we know from the work of the great psychologist Sigmund Freud that we carry unconscious desires and intentions we may not be aware of. How these play out is debatable. What is not is the fact that we carry an unconscious, and that it often *carries us*. Unconscious intentions therefore play a role in the original intent. To deepen our process of interpretation, we must include not only our conscious intentions but also consider our unconscious intentions. Understanding the role of the unconscious and how it affects the interpreter and interpreted allows for a more comprehensive and transparent process.

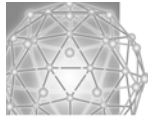
Upper-Right Quadrant

The Upper-Right quadrant focuses on the exterior perspective of the situation or its material aspects, including whatever physical dimensions an object has. Behaviorists use this perspective in their research. In terms of legal interpretation, theorists who are “textualists” come from this approach, as well, and look at the exterior aspects of the written work. It can be seen with the naked eye, and thus no interpretation is necessary. Associate Supreme Court Justice Antonin Scalia subscribes to this approach, using original intent as a secondary source of interpretation. Scalia’s first tactic is to use the text of the Constitution or statute. Here is Scalia speaking in Washington D.C. March 14th, 2005:

I am one of a small number of judges, small number of anybody—judges, professors, lawyers—who are known as originalists. Our manner of interpreting the Constitution is to begin with the text, and to give that text the meaning that it bore when it was adopted by the people. I’m not a “strict constructionist,” despite the introduction. I don’t like the term “strict construction.” I do not think the Constitution, or any text should be interpreted either strictly or sloppily; it should be interpreted reasonably. Many of my interpretations do not deserve the description “strict.” I do believe, however, that you give the text the meaning it had when it was adopted.⁵

This kind of approach is formalistic in nature. It recognizes the wholeness of the text alone, while any other way is thought to inject subjective viewpoints. In their view, reaching to find someone’s intentions that are not already apparent in the document itself is dangerous to a democracy. If it is not in the text of the document, according to this approach, then it is not a legally binding requirement. Scalia further states,

The rule of law is about form. If for example, a citizen performs an act—let us say the sale of certain technology to a foreign country—which is prohibited by a widely publicized bill proposed by the administration and passed by both houses of Congress, but not yet signed by the President, that sale is lawful.... Before the wish becomes a binding law, it must be embodied in a bill that passes both houses and is signed by the President. Is that not formalism?⁶



Integral Legal Theory finds value in this style. There is merit in focusing on the wholeness of what the words say. The problem of course is the meaning of a text (like original intent) is context bound. Those words or phrases show up within the context of a larger document and a larger culture, which the writers came from. Each perspective is therefore necessary to give appropriate depth and meaning to the text itself. This meaning is not found by just examining the text alone. Ken Wilber explains why context matters:

Imagine, for example, you are watching a game of cards, perhaps poker. All of the cards are being used according to rules, but the interesting fact is that none of these rules are written on the cards themselves—none of the rules can be found anywhere on the cards. Each card is actually set in a larger context, which governs its behavior and meaning, and thus by only taking a larger perspective can the actual rules and meanings of the card in that game be discovered and correctly interpreted. Focusing merely on the card itself will completely miss the rules and meaning it is obeying.⁷

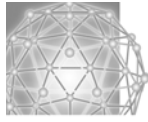
This whole approach unfortunately lacks depth because it does not recognize the fact that the person doing the interpreting is injecting their values and not just gleaning words from a page to decipher meaning. This really is not a bad thing; Integral Legal Theory recognizes that the values of the interpreter are a part of the full reality of the situation and therefore must be included in the interpretive process. However, what is important is that the interpreter becomes conscious and transparent about how they are doing that.

A formalistic and textualist approach to legal interpretation runs into other problems as well. For example, the Second Amendment to the Constitution states that citizens have the right to bear arms. What does that mean? We now have the ability to employ small nuclear devices that can damage major urban populations. Is the text clear on whether or not a citizen ought to be able to carry one? Obviously not, so to rely exclusively on texts is problematic. Furthermore, to try to justify a decision based on the values of the founding fathers in such a situation is mere conjecture.

Lower-Left Quadrant

The Lower-Left quadrant reflects intersubjective meaning. It represents the cultural values developed in the various communities (micro and macro) of the world over time. These values play a role in how a person will interpret a text and in the intent of the original text writers themselves. Wilber explains this using art as an example:

Obviously, the meaning of an artwork does not reside solely in my particular response to it. Other people might have different responses. But the general point is that the meaning of an artwork cannot be divorced from the overall impact it has on its viewers. And in a stronger version, “the viewer” simply means the entire cultural background, with which meaning would not and could not exist in the first place. This great intersubjective background, this cultural background,



provides the ocean of contexts in which art, artist, and viewer alike necessarily float.⁸

Justice Oliver Wendell Holmes championed an approach to the law that scoffed at the notion that law is based on some kind of rational system of justice. Holmes was a realist who believed decision-making is not determined by legal reasoning but by the preferred outcome of the interpreter. The judge, after deciding, would then find reasons to back up their decision. This preferred outcome is derived from the particular values of the interpreter, which come from the culture they are a part of. Decisions are thus merely context driven, based on the relative values of the culture in power (Lower-Left quadrant).

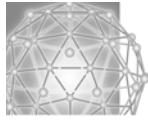
The realist approach is partial because, for one, it does not recognize the value of the empirical approach to law. It can be somewhat narcissistic, too: all other approaches to constitutional interpretation will now have to take a back seat to the person reading the text. This essentially elevates the perspective of the interpreter above all others, which makes little sense in a comprehensive and strategic approach to interpreting the law.

Lower-Right Quadrant

The values of cultures throughout the world exist within and manifest through various systems, which represent the Lower-Right quadrant of any situation. The Earth and the rest of our planets are a part of the solar system. We in the United States have a democratic system of governance, while others might have a socialist system. Our economic system is capitalism. Moreover, of course, we have a legal system, in which we adjudicate various kinds of cases. All of these systems can be looked at empirically to understand how they work.

The case method approach comes closest in turning the law into some form of science. Late 19th century Harvard Dean C.C. Langdell is credited with developing this methodology. Essentially, the case method will take an authoritative text and find its critical principles. Those principles will then be applied to the case at hand. The facts may dictate different results but the essential principles are used just the same. The process of locating the just result requires using legal reasoning. It is understood with this method that if the proper methodological reasoning is followed one will arrive at the just result. No matter the facts, the law becomes clear, mathematical, and systemic when the judge follows these basic principles rigorously.

This approach is a fundamental part of Integral Legal Theory. Extracting principles that are indispensable and then applying those principles to the particular case at hand makes sense. However, to think that the law is as easy as following a formula is unrealistic. One can look to the five to four decisions our U.S. Supreme Court regularly churns out in important cases over the years to know that it is not true. If they were following the formula, they should come up with the same answer, no different than in math class. But this case method ignores the fact that you have a person who is injecting their values into their systemic interpretation, otherwise, we would have the same decisions. For example, the Bush v. Gore decision seemed to have the opposite effect on approaches. The judges considered more liberal were encouraging the state to



let it do its thing while the judges considered conservative were citing due process violations as a reason to stop the proceedings. Because the case method ignores the Left-Hand quadrants as being a part of the interpretative process, its approach leaves a narrow and partial trail of wisdom.

UPPER LEFT	UPPER RIGHT
Law as Integrity Approach	Originalist
I	IT
WE	ITS
Holmes and Realism	Case Method Approach
LOWER LEFT	LOWER RIGHT

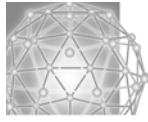
Figure 2. The Four Quadrants of the Interpreter

UPPER LEFT	UPPER RIGHT
Original Intent Approach	Originalist
I	IT
WE	ITS
Holmes and Realism	Case Method Approach
LOWER LEFT	LOWER RIGHT

Figure 3. A Four Quadrant View of the Interpreted

Levels of Development

Stages or levels of development represent another critical piece of the AQAL model.⁹ The idea of levels essentially means that there is a growth hierarchy or “holarchy” in the universe when it



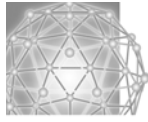
comes to depth and complexity. Developmental theorists like Harvard professors Lawrence Kohlberg and Carol Gilligan have identified stages of moral growth from masculine and feminine perspectives. Developmentalists like Jean Piaget studied stages of cognitive development in individuals. The idea is that each stage within a given line of development represents a specific structure of complexity. Each structure emerges from the previous structure or level. This makes fundamental sense when we think about how a caterpillar emerges into a butterfly or an acorn becomes an oak tree. It also makes sense when you think about the sequence of learning a subject matter. You move from basic to complex.

This development and directionality occurs within each of the four quadrants. There is a complexity of depth in interior realities, cultural values, physical objects, and exterior systems. Most importantly to our study, the law too has gone through its own process of development. Hammurabi and Moses gave us some of our first codes of law. Our laws have gained in complexity and wisdom as the structures of society have gained in complexity. For example, laws supporting copyright infringement in 2007 reflect the techno-informational systems of today as opposed to the property right laws that included women and slaves as objects in the 18th and 19th centuries. The movement of our laws away from slavery being legal is another example of our interior values changing in the direction of greater complexity by recognizing the worth of all individuals regardless of race. It is therefore important to identify the levels of development from which a legal document originated, as well as that of the interpreter themselves.

The important thing to understand here is that a judge will interpret the constitution differently based on their own levels of development, and it is therefore imperative that interpreters of the law become aware of their level of consciousness. If a judge or court comes from a less complex level of consciousness then we all should know about it. Integral justice is the first level of justice that requires the adjudicator to become conscious of their stage of development. The difficult part of this is that most people do not know that there are levels of development beyond their own. It will then become the job of the nominators of judges to understand comprehensively the stage of development an individual is coming from and to discern accordingly. In addition, the particular text or clause the judge is interpreting is the expression of a particular stage of consciousness, and identifying that level of consciousness is a critical piece of the Integral interpretive process as well. Therefore, there is a depth of document and depth of interpreter that must be brought out for a proper interpretive analysis.

The Basic Moral Intuition

At this stage of the interpretive process, I have used the four quadrants to look at the text and interpreter. I have also taken into account the levels of development. The next and final stage is to make a decision. After taking all of the above information into account, how are you going to use it? This implicitly recognizes that an ethical approach guides your decision no matter what methodology you choose to follow. Empiricists will deny ethics, but that is an ethical value itself! Thus, Integral justice requires the adjudicator to become conscious of their ethical approach. In *Sex, Ecology, Spirituality*, Wilber introduces the notion of the Basic Moral Intuition



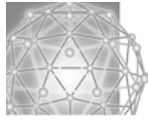
as an ethical approach to making difficult decisions.¹⁰ Generally, when we talk about ethics we are left with two major choices: either Mill's utilitarian approach, which values maximizing good for the greatest number (focusing on span); or Kant's deontology of absolute duty to do good no matter what the circumstances (valuing depth). Both approaches are extremely rational and reasoned. Wilber brilliantly transcends but includes both by synthesizing them through his "all-quadrant, all-level" model. Levels recognizes the depth of the individual and culture while at the same time realizing this must be accomplished for as many beings as possible (span). Therefore, the Basic Moral Intuition (BMI) is to protect and promote the greatest depth for the greatest span.

Whether the judge recognizes it or not they are applying their ethical formula to distill justice anyway. By aligning depth with span, the judge is now free to honestly recognize the case for what it is and make the hard practical decisions that society demands. Depth and span are brought together as the interpreter uses the Basic Moral Intuition to decide the case. Thus, by using the Basic Moral Intuition after recognizing the "quadratic" nature of the law and the level of development it expresses, you have the most comprehensive approach to legal interpretation.

Conclusion

This is only the beginning of Integral Legal Theory. There are more parts to be included to make this a fully comprehensive approach to legal interpretation. We have in place, however, two of the foundational elements, which are the four quadrants and levels of development. We now understand that in every situation there is an interior of the person and culture and an exterior of the person and culture that affects the interpretive process. Every quadrant has its own specific mode of disclosing its particular truth, and each partial piece of truth is taken into account in the overall decision-making process. These partial truths also exist within holarchies of development. Identifying the particular levels of development of the author and interpreter are crucial to an integral system of interpretation. Finally, we must use the Basic Moral Intuition to guide us in our interpretative process as we decide on what is the just result.

The reason why Integral Legal Theory makes sense intuitively is because making a just decision requires seeing reality as clearly and as comprehensively as possible. To do that, one must take all the different perspectives at play into account while recognizing their various depths. That means interior and exterior perspectives of the situation. Anything less dishonors the law and its true comprehensive nature and can never be truly just anyway. We have spent too much time as of late in our jurisprudence deconstructing everyone else's theory without recognizing our own depth as critics and theorists. Awareness of depth can be a critical piece of every interpretation, as it should be. It is time then to embrace a deeper, more comprehensive approach to the study, practice, and interpretation of the law. Integral Legal Theory's time has come.



NOTES

- ¹ Liptak, "Public comments by justices veer toward the political," 2006
- ² Wilber, *Integral psychology: Consciousness, spirit, psychology, therapy*, 2000a, p. 25
- ³ Bork, *The tempting of America: The political seduction of the law*, 1990, p. 144
- ⁴ Bork, *The tempting of America: The political seduction of the law*, 1990, p. 159. When the original intent is not clear, the interpreters who use this approach will broaden their search to include the collective societal values of the people living at the particular time in history when the law was passed. This means that, as a secondary tool, they use a Lower-Left approach, which will be explained later.
- ⁵ Scalia, "Constitutional interpretation the old fashioned way," 2005
- ⁶ Scalia, *A matter of interpretation*, 1997, p. 25. As a fall back, Justice Scalia relies on the culture and values of the people at the time the document was made to guide him in his decision-making, which reflects a Lower-Left approach.
- ⁷ Wilber, *The eye of spirit: An integral vision for a world gone slightly mad*, 2001, p. 110
- ⁸ Wilber, *The eye of spirit: An integral vision for a world gone slightly mad*, 2001, p. 116
- ⁹ Wilber, *Integral spirituality: A startling new role for religion in the modern and postmodern world*, 2006, pp. 4-7
- ¹⁰ Wilber, *Sex, ecology, spirituality: The spirit of evolution*, 2000b, pp. 640-643

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