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IN MEMORIAM: RONALD DWORKIN

The editors of the *Harvard Law Review* respectfully dedicate this issue to Professor Ronald Dworkin.

Richard H. Fallon, Jr.[*]

My first exposure to Ronald Dworkin came at Oxford, in the fall of 1975. Although I was there to study Philosophy, Politics, and Economics, not Law, friends told me that Professor Dworkin's packed lectures on jurisprudence were not to be missed. They were right. Dworkin delivered the most commanding lectures that I had ever heard, at Oxford or anywhere else. Plainly relishing the engagement of his rapt audience, and speaking entirely without notes, he worked his way through, and demolished, various thinkers' accounts of what made it the case, if it was the case, that "The law is that *P*." The critiques built inexorably to the conclusion that first made Dworkin famous: decision of hard cases requires a process of interpretation in which principles, not just "pedigreed" rules, help to make it the case, if it is the case, that "The law is that *P*."

In one way, Dworkin was the very model of an Oxford philosopher. Though dense, his arguments were clear. He was a master of distinctions. But in another way, Dworkin was a gust of fresh air blowing through the ancient university during my two years there. To make his points, he used vivid, often funny examples. After skewering one position or another, he would pause to invite questions and challenges. Challenges came frequently because Dworkin's largest target was his eminent predecessor as Oxford's Professor of Jurisprudence, H. L. A. Hart. At that time and in that setting, however, taking on Dworkin in public debate was a fool's errand. Without fail, he would flatter the challenge, briskly restate it, and then quickly identify some stark fallacy at its heart, some untenable premise, some plain logical mistake.

[*] Ralph S. Tyler, Jr. Professor of Constitutional Law, Harvard Law School.

The 1970s were tough times for England, with the pound swooning and the economy — and sometimes governments — at the mercy of truculent unions. Though I loved Oxford, it was nearly always gray and often cold, and more than a few of the British seemed to relish the task of chastening American ambition. To young Americans there studying Law, or Philosophy, Politics, and Economics, Dworkin personified vitality, panache, and undaunted intellectual ambition. We not only flocked to his lectures, but also awaited — and then breathlessly discussed — his articles in the *New York Review of Books*. As a frequent speaker before formal and informal groups, Dworkin was generous with his time, funny, and warm.

After leaving Oxford, I did not again have any personal encounter with Professor Dworkin for many years. I never knew him at all well. When I departed from Oxford in 1977 to attend law school, I did so with a strong interest in jurisprudence, the field that Dworkin had energized by initiating "the Hart-Dworkin debate." In law school and then in my professional career, other subjects, including constitutional law, engaged me more. Nevertheless, throughout my professional life, I have always had the acute, inescapable sense of working in the shadow of Dworkin's influence.

In the study of American constitutional and statutory interpretation, Dworkin, in my estimation, has no serious rival as the most incisive and fertile theorist of the past four decades. In those fields, the question that he pressed in Oxford lecture halls in the 1970s never loses its freshness, even if answers change: By virtue of what is it the case, if indeed it is the case, that "The law is that *P*"? Dworkin's arguments about the connections between constitutional and statutory interpretation, on the one hand, and political morality, on the other, have had a profound and continuing influence. In his wake, one must either embrace his views about the irreducibly moralized character of legal interpretation, and about the need to interpret legal practice in order to appraise what count as good arguments within it, or fight against his position. For example, even the best constitutional "originalists" now acknowledge that they must advance a normative defense of their position, not stop with the claim — as many once did — that the meaning of the Constitution just is, apparently necessarily, what those who wrote or ratified relevant provisions intended or understood it to be. One must interpret American legal practice in order to identify the force that arguments about original public meanings have, or ought to have, within it.

Professor Dworkin's intellectual influence was as wide as it was deep. Throughout his career, he unleashed a flow of bold and captivating ideas across a broad range of disciplines. Beyond his work in jurisprudence and legal interpretation, Dworkin was an innovative contributor to moral and political philosophy. And he was, of course, a brilliant and highly influential public intellectual. His articles in the

New York Review of Books set a standard for mixing accessibility with intellectual imagination and rigor that no one has yet surpassed.

Among those interested in law, legal interpretation, and philosophy, Dworkin's NYU seminar — co-taught with Thomas Nagel — defined the ultimate intellectual challenge to which one could be summoned (or, as it could seem, subjected). But Dworkin, though sharp, was also courtly and generous to his guests. It was his custom to reveal over lunch all of the most challenging questions that he planned to pose at the seminar in the afternoon and evening. None could complain of unfair surprise.

After not having seen Professor Dworkin for a number of years, I was invited in 2009 to be one of several dozen commentators at a conference based on a prepublication draft of his magisterial book *Justice for Hedgehogs*. Of course he did not look exactly as he had at Oxford thirty-five years earlier, but he appeared remarkably physically unchanged. Delivering the keynote address, he spoke without notes. Summing up much of his life's work, he remained audacious, imaginative, eloquent, and trenchant.

First impressions abide. So do last impressions. And in this case mine were the same: Ronald Dworkin was an intellectual colossus whose forays onto the public stage, whether in his published writings or in person, were simply not to be missed.

Charles Fried[*]

For those of us who have read and appreciated Ronnie Dworkin's writing, who have heard him lecture, debate, or teach a class, and most of all who have had the privilege and pleasure of being his friends, he has made our lives better, richer, and more delightful. I say better because he was first of all a person of high seriousness and moral commitment. He lived well and chose the loveliest spots to do his living — a mews house by Washington Square, Belgravia in London, Chilmark Pond on Martha's Vineyard — and in the company of two beautiful and gifted women, his first wife and after her death his second. In all that beauty, elegance, and even luxury, there could never be any doubt about his constant, consuming seriousness about his work. Montaigne, who would have greatly enjoyed Ronnie's company, writes in his essay *Of Experience* that "[i]t is for little souls, buried un-

[*] Beneficial Professor of Law, Harvard Law School. A version of this piece originally appeared in *The New Republic*.

der the weight of business, to be unable to detach themselves cleanly from it or to leave it and pick it up again. . . . I think it right that the faculty [of the Sorbonne] should dine all the more comfortably and pleasantly for having used the morning profitably and seriously in the work of their school."[1]

And serious his labor was. In his great essay, *Taking Rights Seriously*, which was the foundation for so much else that he did, he proposed a program for seeing law as coextensive with morals. This authorized and indeed required that he pass from what might be a merely formal point to the substantive consideration of where morality does take us in infusing legal institutions with moral purpose. His text was the Constitution of the United States. He saw in the controversies about the meaning of free speech, of due process, of equality, not just a project of textual exegesis or of the parsing of precedent, but a struggle to discern and explicate the deepest moral truths that underlay that document. And indeed he was not much occupied with the textual and precedential intricacies that are the stuff of ordinary constitutional scholarship. If he had had such a parochial focus, his work would not have had the universal appeal and relevance to audiences who do not share our texts, precedents, and history. Early on, he proposed equal concern and respect as what he came to call the sovereign virtue. In the book by that name, he reflected quite concretely on the political happenings of the day — such ephemera as the rights and wrongs of the Clinton impeachment — moving on to the most austere and intricate argumentation about what equality should be taken to mean and how that conception articulates with the adjacent concept of liberty. That argument was surely the distillation of many hours of exploration and debate, many drafts circulated and revised, fine points refined. In that work he proposes a hypothetical schema that brings to mind John Rawls's thought experiment of the original position. And indeed he learned from Rawls, as did a whole school of political philosophers. But beyond specifics what he learned and taught was the possibility, the intellectual necessity, of substantive, not just formal, moral inquiry — how the principles and the content of the right and the good can be displayed to show what should be done, how government should govern, what rights we have.

It has been said, and with some justice, that, to quote Richard Posner, his arguments of high principle somehow always came out to "polemicize in favor of a standard menu of left-liberal policies."[2] But to dismiss his arguments for that reason is to miss the point. The great

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[1] Michel de Montaigne, *Of Experience* (1595), *reprinted in* THE COMPLETE ESSAYS OF MONTAIGNE 815, 851 (Donald M. Frame trans., Stanford University Press 1958).

[2] RICHARD A. POSNER, PUBLIC INTELLECTUALS 374 (2001).

point is that we can argue, produce reasons for and require conclusions by force of reason on the issues — great and small — of the day. If you disagree with his down-to-earth conclusions — about pornography, campaign finance, abortion and euthanasia, or the character of President George W. Bush's picks for the Supreme Court — his essays invite you to reason with him, and they offer the conviction that reason can umpire and even declare a winner in such debates. Anyone who has undergone the discipline of the famous NYU seminars he conducted with his friend and infinitely subtle, refined intellectual peer, Thomas Nagel, would see the life of reason in its highest form. An invitee would offer a paper, which all the participants would have read beforehand. Dworkin and Nagel would take him to lunch and the three of them would decide what are the main themes and pressing questions raised by the paper. Then that afternoon at the seminar itself the two of them would present the guest's thesis to the assemblage. I am sure I am not the only such guest who found that their presentation of his thesis made it finer and richer than he himself might have thought. For it was their, and certainly Ronnie's, fundamental style to look for what was the very best in any argument, and only then to proceed to criticize and perhaps to dismantle or demolish it.

Ronnie's last book published in his lifetime,[3] *Justice for Hedgehogs* (the title a cheeky recollection of Isaiah Berlin's famous *The Hedgehog and the Fox*, itself a cheeky reference to an aphorism of Archilochus — "The fox knows many things, the hedgehog one big thing" — said not at all in celebration of the latter[4]) is a summation of his thought not just about law and political morality but about, as he puts it, "the good life and living well."[5] And his passage from what is the best and richest life for us to choose to how we should therefore — yes, therefore — treat others, the passage from what he calls ethics to what he calls morality and political morality, is deeply thrilling. It turns on the much-used concept of dignity, to which he gives rich and concrete meaning: It has to do with giving our lives a meaning that we choose for them, what he calls authenticity, the taking of our lives, the one life we shall ever have, seriously and making of it something distinctively ours. But this connects intricately with morality, the principles of how we must treat others. And here the bridge is the notion that if we insist on our own dignity, on our right and — in Kant's sense — duty to make something of ourselves, then we must, *must* accord the same dignity to each of the persons with whom we have to do, intimately or in the

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[3] *Religion Without God*, the book he was working on when he died, was published this year, posthumously.

[4] ISAIAH BERLIN, THE HEDGEHOG AND THE FOX 1 (Henry Hardy ed., Princeton Univ. Press 2013) (1953).

[5] RONALD DWORKIN, JUSTICE FOR HEDGEHOGS 195 (2011).

great skein that is a political society. Here is a moving reworking of the theme of the primacy of the right over the good, for there is no primacy only mutual implication.

No account of Dworkin and his work can omit mention of, indeed must dwell on, the elegance of his writing style, of his argumentation, of his person. He is the exemplification of the good life and living well. He lived high but never for a moment hesitated to argue passionately for policies and parties that would surely have cut deeply — *a la* François Hollande — into his ability to live that way. His writing style was pithy and memorable. Arguments had a nerve. Proposals were on offer. And sentences and paragraphs built to a crescendo in a rhetorical but also a logical finale. The first-century B.C. Roman engineer and architect Vitruvius laid it down that buildings must have firmitas, utilitas, venustas — the last being a quality named for the goddess of love and beauty. Ronnie's work and life had all three.

John C. P. Goldberg[*]

We owe it to ourselves, and to others, to live a life of dignity — to develop, embrace, and execute a worthy life plan. Or so Ronald Dworkin argued.[1] If there is indeed such a duty, he discharged it, and then some. And although he insisted that a life's value is determined by how it is lived rather than by what it leaves behind, I trust he would forgive me for acknowledging his impact. Starting with the essays that would become *Taking Rights Seriously* (*TRS*), his writings transformed the discourse of modern political theory, jurisprudence, and constitutional law.[2] They will be discussed and debated for years to come.

I will confine my remarks to two topics that concern somewhat less visible aspects of Dworkin's career and legacy. The first is teaching. The second is the influence of his work on private law.

With respect to teaching, Dworkin was of course legendary for his lectures. Those of us who had the good fortune to study at Oxford

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[*] Eli Goldston Professor of Law, Harvard Law School. Thanks for very helpful comments to Gabriella Blum, Rebecca Brown, Julie Faber, Richard Fallon, Don Herzog, John Manning, Frank Michelman, Arthur Ripstein, Tony Sebok, Henry Smith, and Ben Zipursky. Errors are mine.

[1] RONALD DWORKIN, JUSTICE FOR HEDGEHOGS 195–99 (2011).

[2] RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1977). Is it just me, or do others routinely seize on the phrase "taking ___ seriously" (or variants thereon) when trying to encapsulate the gist of an article or argument?

could only be awestruck at the precision and eloquence with which he spoke. These were exquisite performances.

A few years later, as an NYU 2L, I enrolled in the Dworkin-Nagel colloquium.[3] Dworkin bore primary responsibility for its teaching component. I confess to wondering whether he would be as attentive to pedagogy in a seminar setting. My doubts were unfounded.

Before each week's colloquium, we met with Dworkin to discuss the paper that later would be presented by the invited speaker.[4] As I now appreciate, there are real challenges in teaching a class of this sort. Most of us found the papers difficult, and our training in philosophy ranged from those who had taken an undergraduate survey course to those with PhDs. Dworkin had a great "ear" — he recognized where questions were coming from and responded in a way that moved the conversation forward. His commitment to teaching, and his aptitude for it, were equally evidenced by his insistence that we submit draft final papers, on which he provided incisive comments. Dworkin's unerring ability to cut right to the heart of things — as much a matter of attentiveness as acuity — set the standard against which I measure my own teaching efforts.

Turning now to Dworkin's influence, I will again sound a biographical note. I first encountered *TRS* as an undergraduate, then read it again while doing graduate work in political theory. It is one of a handful of books that have most shaped my thinking.[5] This was no accident. Although he was always concerned first and foremost with questions about the nature of law, judicial review, constitutional and statutory interpretation, distributive justice, and metaethics, Dworkin's thoughts on these topics — unsurprisingly, given his hedgehog-gery[6] — were bound up with thoughts bearing particularly on private law.

Consider the *TRS* chapter titled "Hard Cases."[7] It famously draws categorical distinctions between principles and rights, on the one hand, and policies and goals, on the other. I want to focus, however, on a related idea that is of particular importance to private law, and that, in my view, Dworkin clearly got right.

The insight driving the chapter (and a good deal of Dworkin's early work) is that H. L. A. Hart's account of adjudication — though a

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[3] Back then David Richards and Lawrence Sager also shared responsibility for leading the colloquium.

[4] In fact, Dworkin, Nagel, Richards, or Sager would begin each colloquium by summarizing the paper in a way that would very effectively lay bare its arguments and its flaws.

[5] The others are probably *The Concept of Law* and *Spheres of Justice*. H. L. A. HART, THE CONCEPT OF LAW (3d ed. 2012); MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY (1983).

[6] *See* DWORKIN, *supra* note 1, at 1 ("The fox knows many things, but the hedgehog knows one big thing.").

[7] RONALD DWORKIN, *Hard Cases*, *in* TAKING RIGHTS SERIOUSLY, *supra* note 2, at 81.

vast improvement over the Realist views that Hart critiqued — counts as a serious weakness in *The Concept of Law*.[8] Moreover, it is a weakness that Hart was not in a good position to fix. For, notwithstanding his criticisms of prior positivists, Hart seems to have shared their skepticism about the intelligibility of common law reasoning.[9] "Hard Cases" calls out Hart on just this point. It is erroneous, Dworkin argued, to suppose that the law simply runs out in hard cases, leaving judges to deploy a delegated legislative power.

To make his point, Dworkin brilliantly invited readers to adopt the perspective of litigants in a private-law dispute. In essence, he asked us to imagine a particularly candid trial judge explaining to the parties that she can find no rule of law that allows for an uncontroversial resolution of their dispute, and hence must exercise discretion. If she is to be fully candid, must she further admit that this exercise will take the form of legislation? That she will adjudicate their dispute by determining which resolution promises to generate socially desirable results? Quite the contrary, Dworkin maintained. A decision made on these terms would deprive the parties of something to which they are entitled as a matter of fairness: namely, a decision according to law.[10]

Dworkin bolstered his normative argument with phenomenological and interpretive claims. Judges, he says, do not typically experience hard cases as moments of unbridled discretion: "[They] do not decide hard cases in two stages, first checking to see where the institutional constraints end, and then setting the books aside to stride off on their own. The institutional constraints they sense are pervasive and endure to the decision itself."[11] Their experience is in turn reflected in the legal profession's recognition of certain judicial decisions as canonical. Among these, Dworkin noted, was Judge Benjamin Cardozo's opinion for the New York Court of Appeals in *MacPherson v. Buick Motor Co*.[12] Cardozo recognized that New York common law con-

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[8] HART, *supra* note 5, at 128–29.

[9] *See id.* at 274 (dismissing as mere "rhetoric" and "ritual language" judicial denials that judges engage in lawmaking). Though characteristic of judicial decisions in common law cases, common law reasoning need not be limited to such cases.

[10] DWORKIN, *supra* note 7, at 89 (describing the "right" of a party with the law on her side to win her lawsuit).

[11] *Id.* at 86–87. Hart's primary response to this argument was to deem judges who experienced judicial decisionmaking in this way to be confused or disingenuous. HART, *supra* note 5, at 274–75.

[12] 111 N.E. 1050 (N.Y. 1916). Endearingly, Hercules revealed his human side by mistakenly describing the plaintiff as "Mrs MacPherson." *E.g.*, DWORKIN, *supra* note 7, at 116. Perhaps he conflated in his mind Donald MacPherson with Helen Henningsen, the victim in the equally important automobile-accident case of *Henningsen v. Bloomfield Motors, Inc.*, 161 A.2d 69, 73 (N.J. 1960). *Henningsen* was featured in "The Model of Rules I," an earlier critique of Hart, also reproduced in *TRS*. *See* DWORKIN, *The Model of Rules I*, *in* TAKING RIGHTS SERIOUSLY, *supra*

tained conflicting decisions on the question of whether a product manufacturer owed a duty to take care not to injure persons other than those with whom it dealt directly. Yet that did not lead him to abandon the law for a legislative inquiry into which resolution of the case would best promote safety, or ensure compensation of deserving victims, or redistribute wealth.[13] Rather, Cardozo worked with the cases, reordering them at different levels of abstraction, so as to fashion a doctrinally supported and normatively plausible rule of duty based on foreseeability.[14]

Dworkin would develop his thoughts about adjudication and about private law in illuminating and influential ways. Of particular note is *Law's Empire*, with its extended application of the chain-novel metaphor to *McLoughlin v. O'Brian*,[15] and its critical engagement with economic analyses of common law.[16] While deontologically oriented theorizing in private law would later move forward primarily under the banner of corrective justice theory, it is important not to lose sight of the role that Dworkin played in setting the stage for this development, nor of the influence of his work — either directly at the level of private law theory, indirectly at the level of jurisprudence, or both — on theorists including Mark Geistfeld, Scott Hershovitz, Gregory Keating, Stephen Perry, Arthur Ripstein, and Benjamin Zipursky, to name but a few.

My own work on civil recourse theory with Professor Zipursky, a fellow student in the Dworkin-Nagel colloquium, has been in no small part an effort to harness Dworkinian insights about rights and adjudication to illuminate the character of tort law and private law generally. That it has been so is hardly surprising. It was "Hard Cases" through which I first encountered Benjamin Cardozo and *MacPherson v. Buick*. It was also "Hard Cases" that invited me to think about the "gravitational force" exercised by precedent within common law reasoning.[17] It was "Hard Cases" that early on exposed many of the problems posed by economists' efforts to reinterpret tort law.[18] And it

note 2, at 14, 23. Or perhaps Hercules had in mind another Helen, the protagonist of an even more famous Cardozo opinion. *See* Palsgraf v. Long Island R.R., 162 N.E. 99, 99 (N.Y. 1928).

[13] Scholars including Grant Gilmore and Judge Posner have, in the manner of Hart, unconvincingly sought to dismiss Cardozo's reasoning as mere rhetoric. John C. P. Goldberg, *The Life of the Law*, 51 STAN. L. REV. 1419, 1438–41 (1999) (book review).

[14] DWORKIN, *supra* note 7, at 118–19; *see also* John C. P. Goldberg & Benjamin C. Zipursky, *The Moral of* MacPherson, 146 U. PA. L. REV. 1733, 1799–1825 (1998) (reconstructing Cardozo's reasoning in *MacPherson*, and linking an aspiration to take duty seriously to the efforts of Dworkin and others to take rights seriously).

[15] [1983] 1 A.C. 410 (H.L.) (Eng.) (concerning the proper scope of liability for negligence causing economic loss); *see* RONALD DWORKIN, LAW'S EMPIRE 228–66 (1986).

[16] DWORKIN, *supra* note 15, at 23–29, 276–312.

[17] DWORKIN, *supra* note 7, at 111.

[18] *Id.* at 96–100.

was "Hard Cases" that offered the profound thought that litigants in a private law dispute — like Bobby Fischer in his dispute with the smiling grandmaster Tal — are entitled to have their claims decided in accordance with a proper interpretation of the rules of the game.[19]

Frances Kamm[*]

With the passing of Ronald Dworkin we have all lost a highly important philosopher and public intellectual. For almost twenty years, I was privileged to be his NYU colleague and a regular attendee at the colloquium that he and Thomas Nagel ran, fondly known as the "Tom and Ronnie Show." That three-hour public colloquium, where discussion was always kept at the highest level by its two conveners, was without doubt a high point of the philosophical life of New York City. Those of us who were lucky enough to be presenters also know of the labor-intensive preparation that went into the production of the show. It started with an 11:30 meeting in Ronnie's office after which one proceeded to a three-hour working lunch filled with questions about one's paper. After this thorough critical investigation, one had a free hour (perhaps to visit a local house of worship and pray for deliverance) before a three-hour public colloquium. On one occasion (after prayer), I waited for a truly "killer" question that Ronnie had presented at lunch, but to my surprise he rephrased it in a way that made it possible for me to escape (though I took the high road and fell upon my own description of the original question). The dinners following were exemplars of the life of the mind: discussion of the presenter's paper continued for another two hours led by Ronnie but with truly egalitarian participation and no-holds-barred disputes.

While I was very grateful to be a presenter and have Ronnie's and Tom's minds focused on my work, I was equally grateful for the freedom to speak up about others' work in a largely unfettered environment. Indeed, after a while there almost seemed to be an unconscious orchestration of contributions so that a space for one's comment seemed to open up just as one was ready to make the comment.

Ronnie wasn't all philosophy, however. Another governing passion was his love and knowledge of art. (I joked that I had a postcard of every artwork he once owned, and in fact I managed to retain a poster

[19] *Id.* at 102–03.

[*] Littauer Professor of Philosophy & Public Policy, John F. Kennedy School of Government; Professor of Philosophy, Harvard Faculty of Arts & Sciences.

of a wonderful Vuillard that he had been very sad to sell.) And given his liberal and egalitarian philosophical views, he could offer some surprises as well. For example, I was puzzled when he once suggested that it might be good if people agreed not to report further on what was said in classroom discussions and also surprised to find that he belonged to a famous London club that had a policy of excluding women. He appreciated the finer things in life, and even "elite" atmospheres.

Needless to say, we debated about many issues and also exchanged views in print about such topics as assisted suicide, abortion, rights, and duties. Most recently, I commented on his view that the foundation of individual rights is their being means to fulfilling the duty each of us has to make something worthwhile of his or her life. (I found his grounding of rights in such a duty another surprise, given that he was well known for "taking rights seriously.") Most often we agreed on a bottom line though we might have disagreed about the arguments leading to it. It was a real challenge and always an honor to engage philosophically with him.

In so many ways he was remarkable and irreplaceable.

Frank I. Michelman[*]

Open any article, book, chapter, or video by or starring Ronald Dworkin, and the chances are good you will find on display a signature style of argument. Here is some much-vexed, interminably contested philosophical or jurisprudential question: If you want to give an objectively correct report of the laws of your country, do you bring your own value judgments in or do you fence them out?[1] Or it might be a political or legal question: Do or should freedom to trade in a market and liberty to choose one's marital partner stand on the same legal footing in a liberal constitutional democracy?[2] Can a country really be constitutionally "Jewish" and "democratic" at the same time?[3]

And whoosh! We find ourselves transported from the issue at hand to some seemingly remote department in the world of ideas, there to be

[*] Robert Walmsley University Professor, Emeritus, Harvard University.

[1] *See, e.g.*, RONALD DWORKIN, LAW'S EMPIRE 94–96 (1986) (posing a debate among three conceptions of law, each of which answers differently).

[2] *See* RONALD DWORKIN, JUSTICE FOR HEDGEHOGS 365–68 (2011) (posing the question of whether politically protected "liberty" ought to be deemed coextensive with unrestricted freedom of action).

[3] *See* Ronald Dworkin, Address to the E.N. Thompson Forum on World Issues: Democracy and Religion: America and Israel (Oct. 28, 2008), *available at* http://enthompson.unl.edu/2008-09.shtml#dworkin (explaining difficulties and answering "no").

confronted by some proposition we'd very much rather not refuse: say, that people ("lawyers") who every day run into incurable disagreements about what the law-in-force prescribes are all the same right to think there can be such a thing as fidelity to law;[4] or that the manner of the living of each individual human life carries a special kind of objective importance, for which the person whose life it is holds a special responsibility;[5] or that a democratically legitimate government can only be one that acts with equal concern for the fate of every citizen.[6]

Once he has you at the first step, Dworkin asks you to choose between versions of the value concept for which you have now signed up. When it comes to rules affecting material distributions, does equality of concern mean we aim at equality "of welfare" (measured as wealth, comfort, influence, glory) or rather at equality "of resources?"[7] You choose "resources." But equality of resources turns out to be an intelligible guide to social policy only on the assumption of a guaranteed near-absolute respect for a special category of life-shaping choices by individuals — even as it also essentially demands regulation of trade and other parts of everyday life. Thus does Dworkin contend.[8]

The argument is complex, with many more forks waiting along the road,[9] but you can already see the style, the method. The choice between "welfare" and "resources" does not fall at a natural joint of the universe. It comes to us through an author's interpretive proposal, which you can reject if you think you have a better one at hand. Dworkin bets that a lot of his audience won't; and that most who don't will choose "resources" over "welfare" — thus committing themselves (as matters are set to unfold) to assignment of a different and higher kind of value to "fundamental" liberties than to general market freedom.

The style is Socratic. Dworkin, with champion power and skill, put it memorably to work with sundry aims in view: winning the debate, revamping the discourse, widening the frontiers of knowledge. Within the company of academics, those can all, of course, be ends in themselves. For Dworkin, they were also tools by which he hoped to rally a broader audience to the support of a distinctly "liberal" consti-

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[4] *See* DWORKIN, *supra* note 1, at 13–15 (describing a "point of view" that is "internal" to practices of legal debate and decision).

[5] *See, e.g.*, RONALD DWORKIN, IS DEMOCRACY POSSIBLE HERE? 9–10 (2006).

[6] *See, e.g.*, RONALD DWORKIN, SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY 1 (2000).

[7] *Id.* at 11–14 (introducing the distinction).

[8] *See id.* at 121–23 (summarizing the argument).

[9] *See id.* at 120–83.

tutionalism.[10] And yet he meant them also to serve a civic purpose beyond that one: to help restore a sense of ethical unity and partnership to the fractured, broken, bellicose politics of his country.

You might think at first that piling up conceptual oppositions, over which your listeners can then divide, is not the way to guide them toward recovery of a sense of political alliance. But Dworkin plainly shared with John Rawls the hope that retreat to a level of abstraction disclosing some kind of "underlying basis of agreement" could tame the more concrete divisions, sure to persist, to a point allowing for a politics of mutual regard;[11] and the tactic of arguing up and down through trees of branching conceptual oppositions seems at least potentially well attuned to such a purpose. ("But look how we agree at least down to here.")

The deployment, in this way, of philosophy in the pursuit of political rapprochement came expressly to the fore in Dworkin's book of 2006, *Is Democracy Possible Here?*[12] A like aim is manifest in the fragment I have just been reading of his final book, *Religion Without God*.[13] (I owe Professor Dworkin an apology for the approximation, about to come, of what he wrote there. To get anywhere near its scope, richness, beauty, and craft I would have to reproduce each of the 5224 words of the original, because the man who wrote it was a master, not a waster of words.)

Dworkin's declared goal for this work is a partial transcendence of America's bitter and divisive culture wars, to be sought through a disclosure of commonalities of sentiment and belief that bridge across and bind together large fractions of the memberships of both parties to the combat.[14] On the usual description, these would be "the religious" and "the secular." Dworkin had himself, in the past, used that classification to describe the conflict he envisages.[15] But now he seems to detect a better mapping, one that he hopes can open a space for wide, if still qualified, agreement and correspondingly might lessen hostility over the differences that remain.[16] Dworkin asks us to think in terms

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[10] *See, e.g.*, Ronald Dworkin, *Foundations of Liberal Equality*, *in* 11 THE TANNER LECTURES ON HUMAN VALUES 3, 5 (Grethe B. Peterson ed., 1990) (posing to philosophy the task of giving people "reason[s] . . . to be liberals" that they will find compelling).

[11] JOHN RAWLS, JUSTICE AS FAIRNESS: A RESTATEMENT § 1.1, at 2 (Erin Kelly ed., 2001).

[12] *See* DWORKIN, *supra* note 5, at xi–xii, 4–5.

[13] *See* Ronald Dworkin, *Religion Without God*, N.Y. REV. BOOKS, Apr. 4, 2013, at 67–74. The editors of the *New York Review of Books* describe this piece as an excerpt from the first chapter of a book by the same title, scheduled for publication by the Harvard University Press. *See id.* at 67. It is the only part of the book I have read as I send this tribute off to the *Harvard Law Review*.

[14] *See id.* at 67.

[15] *See* DWORKIN, *supra* note 5, at 56–57 (positing conflict between "tolerant religious" and "tolerant secular" outlooks).

[16] *See* Dworkin, *supra* note 13, at 67.

of a "religious attitude," defined to mean a kind of emotional, spirit-rousing response to our experience of "'nature' — the universe . . . and all its parts" (including us), by which we find these very facts of existence to be instinct with reasons that are action guiding for us.[17] We speak, then, of an attitude of acceptance of a direct experience of *value* as an observable reality in the world, providing a ground for each person's responsibility for a more or less worthy conduct of his life.[18] But *that* experience, as Dworkin insists, is shared by theists and atheists both. By putting the case in those terms, Dworkin aims to bring within one tent an overwhelming preponderance of Americans, be they "godly" or "godless," inviting us then to reassess the importance of the divide that undoubtedly still remains.[19]

Dworkin gets his discourse off the ground with a puzzle seemingly quite aside from the battle he aims to defuse. Much as he once put the question of how sophisticated lawyers explain their experience of the possibility of fidelity to law, now he asks how atheists explain the supposed validity of their value judgments. Does that supposition point toward anything independently existent in the world?[20] Dworkin offers a choice between two kinds of answers: "naturalist" and "realist." "Naturalism" says the only bottom-line reality here is psychophysical, an activity or state of our nervous system and glands. "Realism" — the religious attitude — says the opposite: that value judgment involves perception into a subsisting realm of value that is "independent" of biological facts supposed to be real in some way that value independently is not.[21]

Dworkin expects that most Americans will gravitate to the realist-religious view. But realist accounts, he says, come in two types: "grounded" and "ungrounded." Grounded realism allows that we can accredit an independently subsisting realm of value, but only on the condition that we see some noncircular reason to believe we are equipped with a capacity to find out truths about that realm. Thus, to take the case of main interest here, a realism grounded in theism "traces . . . to a god" our capacity for value judgment.[22]

By contrast, according to an ungrounded realist experience, our capacity for value judgment is "self-certifying"[23] — and so, correspondingly, is the reality of what we judge. Our knowledge that (say) cruelty is wrong comes all and only out of a reflection on value — not on

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[17] *Id.* at 68.
[18] *See id.* at 68, 72.
[19] *See id.* at 67, 74.
[20] *See id.* at 68.
[21] *Id.* at 72.
[22] *Id.* at 69.
[23] *Id.* at 72.

biology, metaphysics, or divine history.[24] Two consequences follow. If you conclude after such a reflection that cruelty is wrong, you can think nothing less than that it is "really" wrong (because what else, then, could "really wrong" possibly mean?).[25] Second, you could not hold such a conclusion to be true without thinking yourself equipped to find it so.[26] Belief in our capacity for truth-finding in the realm of value thus follows from truth-finding, no less than precedes it.

Now, all of that is only an internal, circular account of the ungrounded value-realist position. The only justification for any proposition in the series comes from others in the series. (Try them all and see.) The account thus, as Dworkin is the first to say, defies rather than meets the theistic demand for a noncircular ground of certification for value judgments. One takes the god-free account, if one does, on "faith." In that sense, it could be said that one whistles in the dark.[27]

To theistic value realists, it may seem different. They whistle in the light of their knowledge of the divine, which provides for them an independent certification of their knowledge of value. That seems undoubtedly so, but Dworkin in fact goes on to try to undercut — in part only — even this remaining and doubtless profound difference between theistic and atheistic believers in the commanding reality of value. Importantly, his argument even at this stage stays friendly to theism. Dworkin rejects neither a possible knowledge of God nor the thought that such knowledge can certify a knowledge of value. He only adds a claim that in order for a knowledge of God to certify a knowledge of value to which *we* are beholden, *we* must have already in hand (so to speak) a certain knowledge of value.[28]

The argument is there for you to read. It is sure to draw sharp fire from philosophers, theologians, and others. Let us, therefore, hold it in suspense while accepting all that precedes it in Dworkin's chapter. Theists and atheists should then find themselves companionably sharing a faith in our intuitions of the commanding reality of values and our consequent responsibility to judge and apply them to our lives. Theists perhaps have a further backing for that faith that atheists have not, but the faith in value is still common to both: a budding "overlapping consensus" (so to speak) across differing "comprehen-

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[24] *See id.* at 69–72.

[25] *See id.* The thought here merges with the prior flow of Dworkin's moral-philosophical reflections. *See, e.g.*, DWORKIN, *supra* note 2, at 23–26; Ronald Dworkin, *Objectivity and Truth: You'd Better Believe It*, 25 PHIL. & PUB. AFF. 87 (1996).

[26] *See* Dworkin, *supra* note 13, at 69–72.

[27] *See id.* at 72.

[28] *See id.*

sive . . . views,"[29] which might allow for friendlier resolution of some issues of state policy than we have recently been accustomed to seeing.

Such, apparently, was Dworkin's aim. Application of his broadened conception of "religion" to our currently raging controversies over state policy toward religion is (as reported by the editors of *The New York Review of Books*) "one of the projects of the new book."[30] Dworkin of course did not imagine that anything he could write could put a stop to our culture wars. He did think, though — and he finished his life working nobly in the hope — that "a little philosophy might help."[31]

Martha Minow[*]

Law is a branch of morality. Law should develop then as a multiauthored "chain novel" does, with each author developing a new chapter that connects with the prior one and builds a basis for the next.[1] Judges should be honest and bold enough to engage in interpretation without pretending to be constrained by anything other than the process of interpretation guided by a view of law as integrity. Law is integrity if law's propositions are treated as following from principles of justice and fairness, including procedural fairness. These ideas and many more are Ronald Dworkin's gifts to legal theory and practice. Dworkin's ideas invigorated and elevated law by insisting on constantly connecting law with justice and morality. Even those who disagreed with him remain altered by his work for he set the agenda for debate about law and courts. Just as John Rawls changed the conversation among philosophers — long dominated by technical and linguistic arguments — by articulating and refining a big theory of justice, Ronald Dworkin directed professors, lawyers, and the general public to ask how law does and does not serve justice. He did so by articulating and refining big ideas. Ultimately, he argued that all are part of one single and coherent idea, even though we give it many forms.[2] That idea — value — so aptly captures Dworkin's own life and example. For just as "value" as an English word means worth or something

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[29] JOHN RAWLS, POLITICAL LIBERALISM 144–45 (1993).

[30] Dworkin, *supra* note 13, at 72.

[31] *Id.* at 68.

[*] Morgan and Helen Chu Dean and Professor of Law, Harvard Law School.

[1] RONALD DWORKIN, LAW'S EMPIRE 228–38 (1986).

[2] *See* RONALD DWORKIN, JUSTICE FOR HEDGEHOGS (2011).

intrinsically desirable,[3] Dworkin turned his prodigious talents to a life of worth and lasting influence.

Ronnie himself may have appeared in many forms and yet he, too, embodied coherence. Learned scholar, frequent participant in public discussions of pending legal issues, witty raconteur, he led what seemed like many lives in New York, England, Martha's Vineyard, and elsewhere and yet was always everywhere sparkling in conversation, energizing those around him. To be invited to present a paper in the workshop he chaired at New York University with his sterling colleague Thomas Nagel was to enter the Olympics of academic debate. Not only was the invitation an honor, the experience itself — often extending to six or more hours — invariably left the paper's author breathless, interrogated, and invigorated. As Charles Fried aptly describes:

> An invitee would offer a paper, which all the participants would have read beforehand. Dworkin and Nagel would take him to lunch and the three of them would decide what are the main themes and pressing questions raised by the paper. Then that afternoon at the seminar itself the two of them would present the guest's thesis to the assemblage. I am sure I am not the only such guest who found that their presentation of his thesis made it finer and richer than he himself might have thought. For it was their, and certainly Ronnie's, fundamental style to look for what was the very best in any argument, and only then to proceed to criticize and perhaps to dismantle or demolish it.[4]

No one had more talent for getting inside another's argument to state it better — and critique it thoroughly. Admirably, Dworkin modeled this enterprise regardless of his degree of agreement or disagreement with the arguments before him. Professor Randy Barnett recalls his experience as a student of Dworkin:

> I met with him a couple times to discuss my paper, and the interchanges were amazing. Rather than respond to the criticism or argue, he got inside my argument to see what I needed to say in order to make it work. When he asked me whether I was willing to trade off property rights for an increase in liberty, and I declined, he replied: "Well then you're not a libertarian, you're a propertarian." That challenge inspired a great deal of my early work on liberty that culminated in my book *The Structure of Liberty: Justice and the Rule of Law* . . . .[5]

Dworkin's ideas and positions will continue to draw attention and influence for years to come. But it is his example that I wish to emphasize as the most significant value. Surely one of the most talented

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[3] *See* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1305 (10th ed. 1993).

[4] Charles Fried, *In Memoriam: Ronald Dworkin*, 127 HARV. L. REV. 491, 493 (2013); Charles Fried, *Remembering Ronald Dworkin*, NEW REPUBLIC (Feb. 18, 2013), http://www.newrepublic.com/article/112451/ronald-dworkin-memoriam.

[5] Randy Barnett, *Ronald Dworkin RIP*, VOLOKH CONSPIRACY (Feb. 14, 2013, 2:16 PM), http://www.volokh.com/2013/02/14/ronald-dworkin-rip/.

members of his generation, Dworkin chose law for his course of study and chose to teach, to write, and to engage with the issues of the day even though he could have pursued any number of more remunerative or less vexing avenues. He drew other talented thinkers into debate and action. A case in point is *The Philosophers' Brief*; he organized six distinguished moral and political philosophers to write and submit a brief and to share it with the public when the U.S. Supreme Court considered the constitutionality of government prohibitions against assisted suicide.[6] One does not need to agree with the brief's argument that every competent person has the right to make momentous decisions about the value of his own life to recognize the value of engaging rigorous thinkers — and stimulating the general public — to contribute to legal judgments about such a question.

Many communities claim Ronald Dworkin and Harvard is one of them. He arrived at Harvard Law School already accomplished as a Rhodes Scholar and dazzled classmates and faculty with his clarity and understanding. As he graduated in 1957, Harvard Law faculty recommended Dworkin for the choice position as a clerk for Judge Learned Hand, and Dworkin's experiences engaging with Judge Hand as he drafted his Oliver Wendell Holmes Lectures for Harvard Law School influenced the lectures and influenced Dworkin's future work.[7] Over the course of his career, Dworkin often visited Harvard Law School to teach and to give distinguished lectures, including the Holmes Lectures. The University awarded him an honorary degree in 2009. The Harvard University Press and the *Harvard Law Review* published his influential works[8] and the *Review*'s pages repeatedly en-

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[6] Brief for Ronald Dworkin et al. as Amici Curiae in Support of Respondents, Washington v. Glucksberg, 521 U.S. 702 (1997), *and* Vacco v. Quill, 521 U.S. 793 (1997) (Nos. 95-1858, 96-110). The six were Ronald Dworkin, Thomas Nagel, Robert Nozick, John Rawls, Thomas Scanlon, and Judith Jarvis Thomson. Dworkin observed that he knew of no "other occasion on which a group has intervened in Supreme Court litigation solely as general moral philosophers." Ronald Dworkin, *Introduction to Assisted Suicide: The Philosophers' Brief*, N.Y. REV. BOOKS, Mar. 27, 1997, at 41, 41 n.2.

[7] *See* Godfrey Hodgson, *Ronald Dworkin Obituary: Brilliant Philosopher of Law Who Put Human Dignity at the Centre of His Moral System*, GUARDIAN, Feb. 15, 2013, at 46, *available at* http://www.guardian.co.uk/law/2013/feb/14/ronald-dworkin; Dan Markel, *Learned Hand to Ronnie Dworkin*, PRAWFSBLAWG (Oct. 20, 2005, 2:00 AM), http://prawfsblawg.blogs.com/prawfsblawg/2005/10/learned_hand_to.html; *see also* Ronald Dworkin, Keynote Address, *Justice for Hedgehogs*, 90 B.U. L. REV. 469 (2010).

[8] *See, e.g.*, RONALD DWORKIN, RELIGION WITHOUT GOD (2013); RONALD DWORKIN, JUSTICE FOR HEDGEHOGS (2011); RONALD DWORKIN, JUSTICE IN ROBES (2006); RONALD DWORKIN, SOVEREIGN VIRTUE (2000); RONALD DWORKIN, FREEDOM'S LAW (1996); RONALD DWORKIN, LAW'S EMPIRE (1986); RONALD DWORKIN, A MATTER OF PRINCIPLE (1985); RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1977); Ronald Dworkin, *Thirty Years On*, 115 HARV. L. REV. 1655 (2002) (book review); Ronald Dworkin, *Hard Cases*, 88 HARV. L. REV. 1057 (1975).

gaged with his writings.[9] Whether we agreed or disagreed with him,[10] he challenged us to do work and live lives of value — and the challenge will endure as long as people use words to reason together.

Laurence H. Tribe[*]

When I was a very junior member of the Harvard Law School faculty — an assistant professor in his late twenties — I spent one Saturday afternoon each month meeting informally with a remarkable little group that occasionally included John Rawls, sometimes included Saul Kripke and Robert Nozick, usually included Judith Jarvis Thomson, and nearly always included Charles Fried, Frank Michelman, Tom Nagel, Tim Scanlon — and, of course, Ronald Dworkin. The meetings typically centered on a paper one of us was in the process of thinking through. I still remember my own timid presentation of an early draft of a paper I called "Trial by Mathematics," exploring some issues surrounding the fallacies of quantification, the misuse of probability theory, and the roles of precision and ritual in the trial process. Everyone in the group, as I now recall the conversation, had some interesting and distinctive perspectives to offer, but no one's observations were more penetrating or provocative than Dworkin's. The epistemological and ethical questions he posed sharpened my analysis immeasurably, something for which I remain grateful to this day, more than four decades later. Although my paper, later published in the *Harvard Law Review*,[1] didn't touch on any of Dworkin's philosophical work or his specific jurisprudential concerns, his interests were wide ranging, his intellectual appetites voracious, and his generosity to younger colleagues boundless.

Ronald Dworkin is the preeminent legal philosopher of the past half century. We will not soon see his like again. Author of numerous

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[9] *See, e.g.*, Peter Gabel, Book Review, 91 HARV. L. REV. 302 (1977) (reviewing DWORKIN, TAKING RIGHTS SERIOUSLY, *supra* note 8); Philip Soper, *Dworkin's Domain*, 100 HARV. L. REV. 1166 (1987) (reviewing DWORKIN, LAW'S EMPIRE, *supra* note 1); Cass R. Sunstein, *On Analogical Reasoning*, 106 HARV. L. REV. 741, 783–87 (1993); Jeremy Waldron, 2009 Oliver Wendell Holmes Lectures, *Dignity and Defamation: The Visibility of Hate*, 123 HARV. L. REV. 1596, 1639–42 (2010).

[10] On the unity of value, we disagreed. *See* Martha Minow & Joseph William Singer, *In Favor of Foxes: Pluralism as Fact and Aid to the Pursuit of Justice*, 90 B.U. L. REV. 903 (2010).

[*] Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School. I am grateful to Vivek Suri, J.D., Harvard Law School, 2013, for his invariably excellent assistance although, as usual, all errors are mine.

[1] *See* Laurence H. Tribe, *Trial by Mathematics: Precision and Ritual in the Legal Process*, 84 HARV. L. REV. 1329 (1971).

pathbreaking books in the field, most importantly *Law's Empire* and *A Matter of Principle*, he has most famously made the case that law — contrary to the view of celebrated positivists like H. L. A. Hart — is more than "a matter of what legal institutions . . . have decided."[2] As Dworkin elegantly demonstrates in the body of his work, that positivist view offers "no plausible theory of theoretical disagreement in law."[3] For, as Dworkin so convincingly shows, fundamental disagreement not just about what the law *ought* to be but about what it *is* does in fact take place — indeed, it pervades our discourse. Using that compelling observation, Dworkin makes a devastating argument against the positivist account that such disagreement is a mere illusion. And Dworkin argues further against the purely pragmatic accounts in which law is simply a matter of deciding which choices will maximize the community's ability to achieve its substantive aims.

It is perhaps unsurprising that Dworkin's prose and his central ideas have come to express conventional wisdom in discourse about law. If his points of view no longer seem strikingly original, it is Dworkin's elegant and invariably lucid explanations that are responsible: in numerous venues, most prominently *The New York Review of Books*, Dworkin made his distinctive take on legal philosophy universally accessible and widely if not universally accepted. Although somewhat less successful than his deconstruction of the reductionist views that he has challenged, Dworkin's efforts to develop and defend a constructive path of his own, one he calls "law as integrity," impressively and seamlessly combine the perspectives of both positivists who treat "statements of law [as] backward-looking factual reports" and pragmatists who treat such statements as "forward-looking instrumental programs."[4]

At the heart of Dworkin's affirmative contribution is a picture of the law as an enterprise that provides "the best constructive interpretation of the community's legal practice," where fundamental principles of justice, fairness, procedural due process, and equality not only hold sway but also furnish the frame of reference for measuring the coherence and integrity of competing accounts of legal rules and precedents.[5] Famously, Dworkin analogized a judge deciding a new case to an author writing the next chapter of a chain novel.[6] That analogy has been much written about and criticized, and Dworkin's underlying aspiration to defend a unified theory of law as a whole has been sub-

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[2] RONALD DWORKIN, LAW'S EMPIRE 7 (1986); *see generally* H. L. A. HART, THE CONCEPT OF LAW (3d ed. 2012).

[3] DWORKIN, *supra* note 2, at 6.

[4] *Id.* at 225.

[5] *Id.*

[6] *Id.* at 228.

jected to withering attack. But, whatever its failings, Dworkin's analogy and the unifying vision that drives it offer an inspiring deep glimpse into the inner structure of constitutional, legislative, and judicial decisionmaking, far more illuminating than the theories that treat those processes as largely disconnected. It is doubtless true that Dworkin's chain-novel picture of legal analysis has much more to say to and about judges than it has to say to or about other lawmakers, whether legislative or executive or popular. But the fact that Dworkin's work is in that sense juricentric does not detract much from its power in illuminating a large swath of what is worth saying about law today.

Along the way to constructing his admittedly court-centered theory, Dworkin explored and developed some fundamental distinctions that are all but taken for granted in current political and popular discourse about legal matters — like the distinctions between general legal concepts and particular legal conceptions that embody those concepts, or among policies, rules, standards, and principles — distinctions without which one can hardly imagine conducting intelligent legal conversation today. It would be a mistake to test Dworkin's contribution by asking whether he has forever abolished legal positivism, pragmatism, or realism as major pillars of legal discussion, or by asking whether everybody keeps his distinctions in mind when talking about law. By that standard, no legal philosophy could be worthy of the name. Rather, the question to ask about Dworkin's work is whether we can imagine intelligent legal discourse today that does not at least in part stand on his shoulders. I for one cannot.

Applying his general conceptual framework, Dworkin has done a great deal to show that conventional assumptions about such supposed tensions as that between liberty and equality are the products not of inherent features of the underlying concepts but of parochial premises regarding their meaning and elaboration. In exploring the implications of his general views for such specific topics as the selection of Supreme Court Justices, the appropriate contexts for judicial deference to or disdain toward the judgments of the politically accountable branches of government, the rights and wrongs of race-based affirmative action, and such life-and-death problems as those posed by abortion and physician-assisted suicide, Dworkin has written dozens of illuminating and intellectually accessible essays in *The New York Review of Books* and elsewhere. Whether one agrees or disagrees with him, he has contributed enormously to wide public understanding and appreciation of potentially intractable moral and political puzzles and to their centrality to the most difficult legal controversies.

That is no mean feat; most legal philosophers both in our time and in earlier periods have found themselves choosing between obscurity and inaccessibility, on the one hand, and reductionist oversimplification, on the other. Not so Dworkin. One cannot but admire his ability to

expose and then to fairly explore the structure of legal and moral questions of significance to experts and lay readers alike. The fact that he has had less of value to add to the debates about constitutional structure, from the separation of powers to federalism, than to the discussions about constitutional substance, from free speech to privacy and autonomy and equality, detracts little if at all from the conclusion that his has been a towering contribution not just to jurisprudence and legal philosophy in general but also to constitutional analysis in particular.

Having said that, I must note my unending surprise at Dworkin's sunny assumption that reason would dissolve the deepest differences underlying our legal and especially our constitutional outlooks. In addressing the explicit use of race by government in so-called "affirmative action" programs that are designed to overcome a history of racial subordination and to exploit the many benefits of racial diversity in education and elsewhere, Dworkin seems tone-deaf to a variety of objections that, to my ears at least, sound in a constitutional register. And for him to write, as he has, that "[c]olorblindness . . . has *no* basis in moral principle"[7] is to overstate the point considerably, a fault not uncharacteristic of Dworkin's often excessive claims to moral certainty.

Likewise, in Dworkin's conviction that the abortion controversy would be resolved if only people got the issues straight and made the distinctions that he thinks reason requires, he seems to me strangely blind to the deepest wellsprings of disagreement. Those are matters that I explored in greater detail in my review in *The New York Times* of Dworkin's book, *Life's Dominion*, and will not undertake to rehearse here.[8]

Dworkin's posthumously published essay in *The New York Review of Books*, *Religion Without God*, is characteristic of both the strength and the weakness of his thought. On the one hand, Dworkin makes a powerful case that "com[ing] to understand what the religious point of view really is and why it does not require or assume a supernatural person" would enable us "to lower, at least, the temperature of these battles by separating questions of science from questions of value."[9] On the other hand, he does not fully absorb the lesson of his own observation that the "new religious wars are now really culture wars,"[10] an observation that ought perhaps to temper his optimism about the

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[7] Ronald Dworkin, *The Court and the University*, N.Y. REV. BOOKS, May 15, 2003, at 8, 11 (emphasis added), *available at* http://www.nybooks.com/articles/archives/2003/may/15/the-court-and-the-university/.

[8] *See* Laurence H. Tribe, *On the Edges of Life and Death*, N.Y. TIMES, May 16, 1993, at BR1, *available at* http://www.nytimes.com/1993/05/16/books/on-the-edges-of-life-and-death.html?pagewanted=all&src=pm.

[9] Ronald Dworkin, *Religion Without God*, N.Y. REV. BOOKS, Apr. 4, 2013, at 67, 67, *available at* http://www.nybooks.com/articles/archives/2013/apr/04/religion-without-god/.

[10] *Id.*

possibilities of what some have called "reasoning together." But it was part of Dworkin's charm as well as his genius that he was eternally optimistic about the horizons of reason. For that, I think, we should all be more grateful than critical.

More than forty years ago, when I first met Ronnie in his office at Yale Law School, as I was trying to decide whether to accept Yale's invitation to join its law faculty or to accept the offer that I was fortunate enough to receive at the same time from Harvard, Dworkin asked me a question that I've been turning over in my mind ever since. His question: What role ought political and especially moral philosophy have in the study and teaching of American constitutional law? Given the degree to which the U.S. Constitution reflects a historically contingent and deeply compromised cobbling-together of disparate rather than entirely coherent parts, I didn't have what seemed to me a satisfactory answer at the time.

The mark of a great teacher is to ask questions that drive the listener into a lifelong search for answers. Ronald Dworkin was a great teacher as well as a great legal philosopher. He taught that none of us can be either without at least aspiring to be the other. And he did more: he not only taught us all what questions to ask; he left some tantalizing hints of what the answers might resemble.