7-1-2013

Ronald Dworkin: An Appreciation

Jeremy J. Waldron
NYU School of Law, jeremy.waldron@nyu.edu

Follow this and additional works at: http://lsr.nellco.org/nyu_plltwp

Part of the Biography Commons, Civil Rights and Discrimination Commons, Constitutional Law Commons, Courts Commons, First Amendment Commons, Judges Commons, Jurisprudence Commons, Law and Society Commons, Legal Education Commons, Public Law and Legal Theory Commons, and the Rule of Law Commons

Recommended Citation
http://lsr.nellco.org/nyu_plltwp/411

This Article is brought to you for free and open access by the New York University School of Law at NELLCO Legal Scholarship Repository. It has been accepted for inclusion in New York University Public Law and Legal Theory Working Papers by an authorized administrator of NELLCO Legal Scholarship Repository. For more information, please contact tracy.thompson@nellco.org.
I do not envy those who have had to put into words today the loss of Ronald Dworkin as a father or a friend. I have the easier task of conveying a sense of the importance of his philosophical thought, particularly in the philosophy of law.

I want to acknowledge what we have lost, from his being no longer among us; but also I want to affirm what we gained—at Oxford, in London, in New York, in the world—from his voice and from the light of his intellect.

What we have not lost... Well, we still have the books—Taking Rights Seriously, a collection of papers that in 1977 transformed our understanding of rights and right answers; Law’s Empire, a decade later, a powerful argument about interpretation and integrity; then in 2011, the great synthesis, Justice for Hedgehogs, an affirmation of the unity of value, bringing into a single Dworkinian vision an ethic of dignity and a comprehensive legal and political theory.

What these books embody—and I have named only three out of the fifteen or so that grace the Dworkinian bookshelf—what these books embody in jurisprudence is the most thoughtful and lucid alternative to legal positivism that we have had in the modern era.
I don’t mean anti-positivism, as though Ronnie’s aim was just to refute the claims of his teachers at Oxford. His work may have started that way 45 years ago, in “The Model of Rules.” But in fact what has been most valuable in Ronnie’s jurisprudential thought is the elaboration of an alternative theory of law,—which, mostly, was allowed to develop under its own elegant momentum.

In this great and graceful body of work, Ronnie gave us a living jurisprudence, one which credited the practice of law with reason and thoughtfulness, not just the mechanical application of rules. It was a jurisprudence that taught us to take seriously forms of argument that—to the bewilderment of positivists, pragmatists, and all sorts of skeptics—have lawyers and judges delving doggedly again and again into the books of the law to search for legal answers to hard cases, rather than just admitting defeat at the first sign that there is not going to be any text or precedent directly on point.

He had the effrontery to suggest that there were right answers to the legal problems posed in hard cases and that it mattered whether we got the answers right or wrong. This was a view which many disparaged, but it was a view that respected the position of plaintiffs and petitioners as people coming into law to seek vindication of their rights, not just as lobbyists for a quasi-legislative solution. It was a position, too, that respected the obligation of
judges never to give up on the sense that the existing law demanded something of them, even in the most difficult disputes.

Under the Rule of Law, we don’t just settle points of law \textit{pragmatically}. We proceed, as far as possible, in a way that keeps faith with what is already laid down.

Dworkin helped us chart the topography of law; for the \textit{corpus juris} is not just a heap of norms; beneath the explicit rules there are principles and policies that a legal system has committed itself to implicitly, over the years; deep subterranean channels of moral concern that flow through every part of the law.

In an argument of quite stunning complexity, his 1986 book \textit{Law’s Empire} set out grounds for the responsibility that lawyers and judges have to the laws \textit{as a whole}, including their responsibility to measures enacted by people who may not have shared their views about justice. Our job, he said, as lawyers, scholars, and judges, is to bring interpretive coherence—integrity—to the whole body of the law.

The unearthing of these principles and the burden of this integrity meant that legal reasoning, in Ronnie’s opinion, \textit{is a form of moral reasoning}. This was the artery of his jurisprudence: that legal reasoning \textit{is a form of moral reasoning}. Certainly, it is a complicated and uneasy form, for it depends on judgments about the moral
importance of contingent events like enactment and the setting of precedents that ordinary moralizing does not concern itself with. “Nothing guarantees that our laws will be just,” Ronnie acknowledged. But that doesn’t mean that we separate the relation between law and morality; it means we complicate the relation between law and morality. Like a system of ethics that has to deal with the moral significance of promises we wish had never been made, so too the morality of law has to come to terms—come to moral terms—with statutes we wish had never been passed and precedents we wish had not been laid down. But the mark of legality is the felt need to respect those with whom we share the community, including those whose decisions we disagree with—to respect on moral grounds the legacy that they have contributed to, as we expect them to respect the legacy—the same legacy of law—that we have contributed to.

As I said, the affirmation of this entanglement of law and morality was the artery of Ronnie’s jurisprudence. And for the philosophy of law generally, these are ideas of momentous importance. They will resonate down the generations. They are not uncontroversial by any means, but the controversies they provoke have been productive, sparkingly productive, in the otherwise desiccated landscape of our subject.
It is not just legal philosophy. No one can do justice in ten short minutes to thought as wide-ranging as Ronnie’s. There is his work in constitutional law: what he called “the moral reading” of the American constitution; and his conviction that even in Britain, a bill of rights with strong judicial review was not only possible, but would strengthen democracy by strengthening the conditions that make democracy legitimate.

Then there is his writing on equality in moral and political philosophy, which he began working on at the end of the 1970s—producing two articles of massive importance in the first ever issues of *Philosophy and Public Affairs*. Like many here today, I had the good fortune to attend the seminars on these and other topics—where Ronnie stood with other titans like Bernard Williams, Charles Taylor, Amartya Sen, and Derek Parfit. (Those were the days when lectures and seminars at Oxford were something more than just adjuncts to courses.) It is impossible to overestimate the influence of these pieces on equality—“What is Equality? 1. Equality of Welfare” and “What is Equality? 2. Equality of Resources” —in setting the agenda for the study of justice—luck egalitarianism and so on—in the 1980s, 1990’s and beyond.

We marveled then at the range of Dworkin’s ideas. We thought he was a glamorous fox who knew ever so many things. We didn’t
always see that, while he was working both on the theory of equality and on the jurisprudence of *Law’s Empire* and on the substance of end-of-life and abortion issues in *Life’s Dominion*, he was also laying the foundations for a unifying ethical vision that, in the manner of the hedgehog, would bring together these different facets of a comprehensive theory of justice.

The vision was unified, in his great ethical work, *Justice for Hedgehogs*, by a principle of *dignity*. Each person, said Ronnie, has a certain responsibility for the precious shape of his or her own life, and everyone has a duty to respect the conditions under which others are able to discharge that responsibility. That’s what “human dignity” meant for Ronnie and it underpinned both the principles of responsibility that were so important in the luck-egalitarian side of his account of equality and the principles of mutual respect that are represented in the rule of law. His great work of synthesis, *Justice for Hedgehogs* revealed this as the foundation of all his positions—and I do mean “foundation,” which is not the same as the fortification that allows a philosopher to see off contrary intuitions. I mean that Justice for Hedgehogs bravely identified the very deep underpinning of his various positions, even though that explicit identification made each of them somewhat more vulnerable, by presenting a deeper as well as a wider and more integrated target.
I talked at the beginning about what we have lost and what, through Ronnie’s life and work, we gained. What we have and can treasure still are the writings, the books, the articles (whether they are in the *Oxford Journal of Legal Studies* or the *New York Review of Books*), the jurisprudence, the new ways of connecting ethics and political philosophy.

What we have lost, though, is what you have heard about from others this afternoon: the warmth of his chortling good humor, the liberality of his positions and personality; his generous and embracing charm; the strength of a mind that could sustain an argument in a lecture for 90 minutes without a note, the dogged and delighted commitment to intellectual exchange—Ronnie was never one to allow himself the last word in an argument and he wouldn’t allow anyone else the last word either.

I had the honor to engage him for years in arguments about judicial review—a disagreement that has loomed large in the pleasure and profit of exchange, but that is dwarfed by everything I owe to him in the example he set of a commitment to the sunny upland expansiveness of political philosophy pursued in the radiance of an affection for the law.
I have tried to be calm in what I’ve said this afternoon about Ronnie’s thought and legacy. But it is very difficult. This is not just a tribute; it is a love letter, to a man who 35 years ago at Oxford helped me find my feet, who over the years set forth for me the virtue of argument through his own good-humored example, who showed me—showed us all—how much more you can achieve by taking seriously the nobility of law’s empire than by any corrosive or skeptical detachment from its aspirations.

To his memory, then, I pledge a resolve, as far as I am able, to carry this on, with others I hope, to continue the refreshment of jurisprudence with these insights Ronnie gave us, in a way that does justice to the generosity and unity of his vision.