

TRIBUTE TO RONALD DWORKIN†

I first read about Ronald Dworkin in *Time Magazine*, in an article that appeared in the issue of September 5, 1977.¹ I was a youngster teaching philosophy classes at the University of Otago, and finishing my law degree when one of my dearest friends and mentors, my philosophical godmother, Gwen Taylor (now a lucid ninety year old in retirement in New Zealand), drew the article to my attention. I was making plans to go to Oxford in 1978. Gwen had written to H.L.A. Hart, whom she knew and asked for his advice as to who I should study with: Hart responded that he was no longer taking new students and that I should work with Dworkin. Which was very good advice. And it was Gwen who found the article.

I have a copy of it here, from the *Time Magazine* archive. It contains a report by *Time's* David Beckwith who, it said, visited Ronnie at his summer home on Martha's Vineyard:

On a typical morning, the tanned, sandy-haired law professor pulls on a pair of bathing trunks and is soon put-putting in his outboard en route to a brisk swim in the surf off his small stretch of private beach. An evening might well include conversation with some of the Vineyard's summer literati, such as Lillian Hellman, William Styron or Anthony Lewis. For Dworkin, the leisure is not mere idling, . . . but a way of getting new ideas to augment his own original thinking on individual rights.²

And I remember there was a picture of Ronnie, in his bathing trunks, on his boat, thinking about the rights of man and the drawbacks of legal positivism.³ The photo is not in the archive. But the article is surprisingly good as a brief introduction to the main themes of *Taking Rights Seriously*.⁴ At that time, the bottle containing *Taking Rights Seriously* had not yet washed ashore in New Zealand. We had all just finished our first reading of John Rawls⁵ and we were reeling under the impact of Robert Nozick's book, *Anarchy*,

† University Professor, New York University. At the time of the dedication to Professor Dworkin on April 17, 2006, Professor Waldron was the University Professor in the School of Law, Columbia University. As indicated in his tribute, he has since joined the faculty of New York University School of Law.

1. David Beckwith, *Treating People as Equals: A Yank at Oxford Rethinks Individual Rights*, TIME, Sept. 5, 1977, at 54.

2. *Id.*

3. *Id.*

4. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977).

5. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

State and Utopia.⁶ Those were fertile and bracing times to set out for graduate study in legal and political philosophy.

Anyway, the following year I went to Oxford, to University College, and Professor Dworkin was good enough to take on this young New Zealander as a student. I was very fortunate in this regard because my topic was not like the one that most students wanted to pursue with him—it wasn't a dissertation on the many flaws and inconsistencies in the legal philosophy of R.M. Dworkin. It was a comparison of Locke and Hegel on issues of private property, with special reference to T.H. Green and Bernard Bosanquet—which was certainly not plum in the centre of Ronnie's interests. But he arranged for me to see Alan Ryan on the Locke and Hegel material, and he brought his own very considerable egalitarian arguments to bear on some of the sillier things I was saying about the advantages of private ownership. This was around the time of the gestation of the two articles on "Equality of Welfare" and "Equality of Resources," which were discussed in Ronnie's seminars in 1979, I think, before being published a year or two later in *Philosophy and Public Affairs*.⁷

Professor Dworkin was a formidable supervisor. Like my contemporaries Chaim Gans and Stephen Perry, I had the experience of that sad trudge down the stairs in Kybald House, after a grueling going-over by Ronnie, each of us coming down the stairs after our respective sessions with him, with our latest papers or chapters or bright ideas in humiliating shreds. Not that there was anything unfriendly about the sessions. If memory serves me right, there was sometimes an enormous gin-and-tonic on offer. But the drink did little to mitigate Ronnie's exposure of the fallacy in my latest attempt to defend a Lockean or a Hegelian theory about the importance of property-production for human agency. "You know, Jeremy," Ronnie would say, "I can't think of anything I could possibly *make* that I would ever want to *keep*." And off I'd go down the stairs to the solace of the Graduate Common Room, to summon the nerve to try again. Sometimes the refutations would be alarmingly casual: "I'm sorry, Jeremy," Ronnie would say, "I haven't had a chance to read your paper"—holding up my latest sixty page masterpiece. "Can you give me five minutes?" And I would give him five minutes, and come back, and he'd tear the argument to shreds—not just in general but in detail—and once again, there

6. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974).

7. Ronald Dworkin, *What is Equality? Part 1: Equality of Welfare*, 10 *PHIL. OF PUB. AFF.* 185 (1981); Ronald Dworkin, *What is Equality? Part 2: Equality of Resources*, 10 *PHIL. OF PUB. AFF.* 283 (1981).

would be the sad humiliated trudge down the Kybald House staircase.

I am making this sound more miserable than it was. I actually had a glorious time. I was privileged to be among a group of wonderful friends at Oxford (Leslie Green, who is visiting here next Fall was one of them), and University College itself was a philosophical paradise, with not only Ronnie, but also John Finnis, H.L.A. Hart, John Mackie, Gareth Evans, John McDowell, all in that one college—not to mention Joseph Raz nearby at Balliol, Charles Taylor at All Souls, Amartya Sen (I think at Nuffield), R.M. Hare still around, Isaiah Berlin and Peter Strawson still around.

Mostly what I learned was that the way Dworkin treated his graduate students—or this graduate student, at any rate—was with *respect*. This was argument; *this* was what it was to be taken seriously. This was what Professor Dworkin and his friends did to each other. I believe that everything I have written and published bears the improving mark of those rigorous sessions. And if there is an ounce of egalitarian good sense in my book on property, or in my subsequent writings, it is Ronald Dworkin's responsibility. That is a very great debt.

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In those days, I had less interest directly in the philosophy of law. But everyone knew that something special had happened in jurisprudence in the late 1960s with the publication of Dworkin's article, "The Model of Rules"⁸—whether they knew about it at first hand or read about it in *Time Magazine*.

H.L.A. Hart's work—clear, rigorous, elegant—was the starting point. Everyone knew that, and Dworkin acknowledged it explicitly at the beginning of his work⁹ and also *substantially* in the way that he worked from and, in his criticisms, worked *to* the analytic theses developed by Hart rather than from or to the jello-like platitudes and pomposities that had previously passed for legal philosophy in the United States. Hart had laid down some clear pathways, set out some main lines and structures for thinking about law and legal systems.

But Dworkin brought that landscape to life, and gave it color and content. He brought jurisprudence to life, insisting that the austere pathways of Hart's conception had to be related to, tested against, and modified in the light of the actual practice of lawyers

8. Ronald Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14 (1967).

9. *Id.* at 17.

and judges. That gave us a living jurisprudence and, once we had it, we could see that some of the lines and structures in Hart's account, admirable and elegant though they might be, were misleading in their austerity and sold the law short, both so far as its inherent moral and political commitments were concerned (particularly its commitment to rights) and so far as its logic and forms of reasoning were concerned—forms of reasoning which, to the bewilderment and confusion of positivists, pragmatists and all sorts of skeptics, have lawyers and judges delving doggedly into the legal materials again and again to search for legal answers to the hard cases that exercise the courts rather than admitting defeat just because they don't find a case or text exactly on point. Taking this doggedness seriously—acknowledging its reality and making complicated sense of it—is one of the great tributes that Ronald Dworkin's jurisprudence pays to the actual practice of law.

Moreover Dworkin brought legal philosophy to life in another way; he connected it, not just by method, but by substance to the study of moral philosophy and normative political theory. I don't know whether I am convinced finally by the enormously ambitious argument of Chapter Six of *Law's Empire*.¹⁰ I am certain, though, that argument on that scale is just what is needed in jurisprudence, connecting key values associated with legal theory to questions about fundamental aspects of political and social obligation. And I hope Ronnie is aware that a number of us have taken heart from his recommendation that perhaps it is time for analytic legal philosophy to turn its back on the sterile and inbred ptolemaics of the separation thesis,¹¹ exploring instead where and how, directly or indirectly, the very idea of law connects with important social values.

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These are not obituaries we are giving here today or even retirement tributes. Ronnie is here at NYU, and his work in jurisprudence and political philosophy continues to grow. Just in the last few months, we have seen the publication of *Justice in Robes*,¹² bringing together some recent Dworkin pieces and highlighting the connections—which are now vivid and explicit in his work—between

10. RONALD DWORKIN, *LAW'S EMPIRE* (1986).

11. Ronald Dworkin, *Thirty Years On*, 115 HARV. L. REV. 1655, 1677-80 (2002) (reviewing JULES COLEMAN, *THE PRACTICE OF PRINCIPLE: IN DEFENSE OF A PRAGMATIST APPROACH TO LEGAL THEORY* (2001)).

12. RONALD DWORKIN, *JUSTICE IN ROBES* (2006). See also the review of this work in Jeremy Waldron, *How Judges Should Judge*, N.Y. REV. BOOKS, Aug. 10, 2006, at 54.

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the character of judicial reasoning, the concept of law, and the notion of legality and the Rule of Law. It's a connection that I also take very seriously indeed.

I began on a personal note and I will end on a personal note. More than twenty-five years after that time in Oxford, after those sessions in Kybald House at University College, I now have the opportunity to work closely in Professor Dworkin's company as an NYU colleague.¹³ As many of you know, I will be transferring my allegiance from Columbia to New York University as of the first of July. Professor Dworkin's advice played a considerable part in that decision—which was not easy—and that advice is much appreciated, very much appreciated. Even more, the fact of his presence at NYU, and the character of the work in which he is presently engaged, were huge factors in making this the most attractive of the options I faced. Dworkin and I don't agree about everything—we will quarrel no doubt in the Colloquium on Law, Philosophy and Political Theory (and outside the Colloquium) about judicial review of legislation. But on the basic program for the philosophy of law and on the spirit that should animate our work in this most demanding and rewarding of disciplines, I and a number of my friends owe everything of substance, everything of clarity, to the approaches that Dworkin has pioneered. It's a pleasure and a privilege to be able to say that out loud in this tribute.

JEREMY WALDRON

University Professor, New York University

13. At the time of the dedication ceremony, Professor Waldron was University Professor at Columbia University and Director of the Center for Law and Philosophy, Columbia Law School. He took up his position at NYU in July 2006.

