

UTOPIAN THINKING:

A UTOPIAN APPROACH TO DWORKIN'S LAW'S EMPIRE

UTOPIAN THINKING:
DWORKIN'S LAW'S EMPIRE
SEEN FROM A UTOPIAN PERSPECTIVE

By

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ABSTRACT

In this paper I argue that what we commonly understand as 'utopias' are but a particular kind of utopia. The inhibitions we have about spending our energy on useless dreams about perfect societies, either in some long ago time, some far away place, or in our own futures, stem from our familiarity with those utopias which can generally be described as being modelled after Plato.

There are elements of utopian thinking in many of our approaches to social problems. We do not recognize them for what they are because of their negative connotation. We are therefore unable to take advantage of the many positive features of utopian thought. Our efforts to avoid being labelled utopian have a negative effect on our lives.

Dworkin structures Law's Empire partly in response to his understanding of utopias. He too tries to disassociate himself from them and claims instead to be concerned with existing practice. There are, however, many utopian elements in Law's Empire. In not recognizing them as such we run the risk of forgetting to think about what we need to do in order to bridge the gap between who we are now and who we want to be.

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Introduction

Often when confronted with something that fits our present understanding of 'utopian' our impulse is to think that if it's utopian then it doesn't really matter; it's a dream, it's unrealistic. To declare that something is "utopian" is effectively to put a stop to the conversation. We try to distance ourselves from utopias because we see them as irrelevant, or perhaps even as dangerous. They seem to make impossible claims, to be totally unrelated to the present - to the reality we know. We may view them as "idealistic" formulations of futures that will never come to pass. Perhaps we may also be grateful for their apparent impossibility, thinking of failed utopian experiments that have brought dictatorship and censorship and inflicted misery in their wake.

But when we try to be 'realistic', to work only with probabilities and ignore possibilities, we end up either explaining and describing what we already know to be 'real' or else hopelessly lost for lacking the methodology to introduce fundamentally new ideas into an existing conceptual framework. It seems the only road open to us is some kind of awkward leap of faith. The reasons we are able to give in arguing for change do not seem to have the impact

required for a change in consciousness. Advances, in the sense of ideas which challenge our existing network of ideas and the actions based on them, seem to come from 'accidents'--whether in scientific experiments or intuitive flashes or events that seem to catapult one after the other with a logic all their own.

This paper will argue that a better way to manage our thinking and our behaviour would be to face head on the various tensions that come into play in making decisions about what we 'should' do--both in the sense of moral questions and in the sense of questions about the future. Since utopian thinking is a plane where many of these tensions come into play, it is useful to examine this type of thinking as a unique methodology which may help to fill a gap between the various, seemingly unbridgeable, dichotomies which we ourselves have created. There is, of course, a utopian impulse at work in proposing this argument.

In arguing for change within our present society, we are confronted with a dichotomy between our visions of what might be possible futures and that future which we understand as an extension of our present condition. When our ideas about a better future conflict with the prevailing paradigm of a better future, then we are confronted with the seeming dichotomy between working to improve what is our present condition and exchanging it for something altogether different. How do we decide what to do? We will have

difficulty integrating the proposals of utopian thinkers so long as we continue to separate utopias from the 'real world' we live in. We do not have a philosophical understanding of how integrating these new and different ideas can be useful. We do not recognize in our own thinking those features which are utopian.

In the following chapters I will attempt to isolate features of utopian thinking from our ideas about change, the future, closed systems, what is 'realistic' and what is 'abstract'. I will argue that our common conceptions about what is 'utopian' are based on our familiarity with a particular type of utopia and that our assumptions about what are identifying characteristics of all utopias are instead tied to a particular view of our world. All utopias reflect a particular philosophical context and this context changes over time and in different social contexts. Utopias are not defined by the type of reasoning or methodology they advocate.

I will outline the major features of Dworkin's Law's Empire in the hope that this particular example may contribute to demonstrating how our present understanding of utopias hinders our ability to manage change. Seen from the perspective of this paper, Dworkin's approach becomes but another, different, style of utopian thinking. We will examine in greater detail how the misunderstanding of what utopian thinking is can lead to a conflation of ideas about

how we handle the possibilities of change in our society. One of the most ambitious facets of Dworkin's proposal is his attempt to dissolve 'false dichotomies'. The different understanding of utopian thinking which I propose in this paper allows us to test the solutions he suggests by questioning his analysis of the problem.

Lastly we will consider how and why we should integrate utopian thinking with the ideas we have about our present society. As will have become apparent in the discussion about Law's Empire, the different worlds we try to integrate might be imaginary, they might represent two existing societies, or one might be 'real' and the other 'conceptual'. In the case of the last example, the debate might be between our own society and a utopian proposal. It might also be between members of the same society, one of whom claims to have described 'reality' more accurately than the other.

Is there some way to extend that respect which we have for those who share our beliefs but have different ways of expressing them, to those who seem to have different beliefs altogether? Utopian thinking allows us to expand the range of participants in discussions about how our societies might be better if they were different. Hopefully it can also make these discussions more productive.

Chapter One
Utopian Thought Considered From a Utopian Perspective

1. *Utopias are a bridge between private and public dreams.*

A utopia is an answer to the implicit question 'How would life be better?'. Though a utopia is one person's answer to this question, the question is not how would my life be better but how would life in general be better for all of us. I may want security from being deprived of basic needs, opportunities to explore my interests, a life lived in partnership with nature rather than in competition with it. But I don't create a utopia until I try to imagine what kind of social-physical environment would make these things possible in a long-term way. Even if my utopia were one in which I wanted to be left completely alone with my wishes fulfilled, it would still fit under the general category of utopias so long as I prescribed for everyone the type of social/conceptual order which would make these conditions possible for me. I must recognize the interdependence and interrelatedness of all the things that matter to me in the context of 'another' - whether the 'other' is all the other people, the physical world, or the spiritual world. The utopia which is most challenging to consider is one which most sweepingly attempts to explicate the connections and relationships among various aspects of life.

2. *Utopias remind us of the contextual nature of meaning.*

In addressing how life would be better for all of us, a utopia asserts a new meaning of life and of society. It challenges the meanings we now hold to be true by reminding us that we may replace these meanings with others. The meanings and values I hold now are dependent upon the conceptual framework I share with present society--whether in agreement or disagreement, as two sides are of one coin. The negative elements of an existing society might not appear to be negative in a different society. For example, we may place a negative value on certain limits to our freedom 'now', but in a different society the reasons for valuing these freedoms may disappear entirely. What we value as positive now may appear irrelevant or even negative in a different society. For instance, we may value certain types of labour now for the benefits they bring but these may no longer be as valuable in a society in which everyone has those same benefits.

Creating and considering utopias should help us to understand that we cannot simply shift around values and meanings as building blocks or jigsaw pieces that fit more than one puzzle. When one element changes, everything else is liable to change as well. In forcing us to consider the possibility and nature of change from our present condition a utopia underscores the contextual nature of meanings and values as specific to networks of thought and consciousness.

3. *Utopias provide a way of constructing models which represent a network of thoughts and values.*

Utopias are proposed as models of society. Because they challenge all of our thoughts and values they are more complex than models we build from within our present network of consciousness. Even if a particular utopia focuses on one goal--whether economic, spiritual or psychological--it challenges our reasoning and priorities in other aspects by making us consider how life would be different in all areas if this one aspect were allowed to take precedence. In comparing these different systems of thought we are encouraged to make fundamental criticisms about our own society for which we may otherwise lack the language, concepts, methodology, or imagination. A utopian network of consciousness is no more or less 'real' than our 'existing' network of consciousness. The utopian network of thinking is the elaboration of how different ideas and values relate to one another given a particular view of society. When we read the utopian proposal we bring to that reading another network of ideas and values which reflects our present understanding of society. We can argue about whether our understanding of society is better or worse than that presented by the utopia, but we cannot claim that it is more 'real'. We are comparing two conceptual frameworks with each other. Utopias remind us that our understanding of our

present society can vary according to what we consider its possible future to be. Utopian models weave together a description of how the society is organized with a statement about how priorities within that society should be established and an expression of a view of a possible future. In this way they are different from models we use to analyze particular aspects of society. We are not merely analyzing power structures, the flow of communication, or the roles played by different institutions. Unlike other models of society, utopias encourage us to examine our own beliefs and values at the same time as we assess the utopian model. A utopia is a mechanism by which we can attempt a meta-level critique of the prevalent consciousness, of the conceptual network of present societies.

4. *Utopias encourage us to imagine the possibilities presented by change.*

Utopias implicitly declare that we do not presently live as well as we might. They express hope that a better future is possible--that change is possible. Authors of dystopias warn that if we continue to emphasize certain values or concepts above others we will come to live in a world that is even worse than the one we now live in. If we accept that the bleakest pessimism stifles creativity, it might still be argued that by making the effort to create a dystopia the authors express a hope that their warning will

be heeded--that a better future may yet be possible. Dystopias too attempt a meta-level critique of society by positing a counter society, by creating a counter network of consciousness by which to measure our present society. Our initial response may be one of horror but dystopias may help to create a change in consciousness which steers us away from the dystopian scenario. They share with utopias in general the attempt to increase our sensitivity to the range of what is possible.

On the plane of utopian thought we become more aware that different conceptual networks can be compared with each other as networks. When we look outside of our own society to other present societies our ability to make trans-societal comparisons founders when we attempt to isolate concepts from one society and apply them to another. For instance, what we understand as myth or superstition may in another society--in a different conceptual network--be held as a truth. We may not be inclined to admit or uncover what are our own myths. We may believe that it is the job of science to explain the world to us--that eventually science will reveal to us what is illusion and what is truth. Identifying a myth in another society is not in itself sufficient to motivate us to uncover our own myths, particularly if we understand myths to be some form of delusion.

We need a mechanism by which we might learn to

become comfortable with making judgements about our own and other societies in relation to each other--a method which encourages self-examination. Utopias answer this need. By challenging our consciousness they motivate us to try to explain our present way of thinking and to measure our way of thought against that vision of a better society proposed by the utopia. Trans-utopian comparisons are an exercise in making trans-societal comparisons and in making them at all we are encouraged to act on our own impulses to express hope about a better future.

5. Utopian visions are an attempt by people to respond to troubles in their own time and place in a way which goes beyond a specific time and place.

In focusing our attention on conceptual networks, utopian thinking highlights the conceptual dimension of questions we might otherwise describe as merely temporal or local and the contextual dimensions of questions we might otherwise describe as purely conceptual. Utopias are just as likely to be set in a supposedly contemporary 'far away' place as they are to be located in the future. Irrespective of their setting, utopias seek to expand our sense of what is possible. But they are derived from within an existing conceptual network. They treat time and place as immaterial and are at the same time visions which grow out of a time and place in so far as they are the expressions of one

person's experience, analysis, and hope. They qualify as philosophy and at the same time remind us that philosophy is itself a response to the questions prevalent in the current and previous networks of consciousness. Although they seem to be about the future, utopias provide a plane from which we are reminded that what is conceived now develops from what has been conceived before.

6. *Utopias force us to examine our choices in both an abstract way and on specific grounds.*

In highlighting the conceptual dimension of claims about the future utopian thinking challenges us to examine whether there might be other ways of assessing these. Utopias ask us to assess something which can not be proven through experience. They also ask us to assess something which seems to be separate from time and place. If neither deduction nor induction seem to provide us with the types of answers we want with respect to the 'future', perhaps our questions themselves should be changed. We are accustomed to treating our questions differently, depending on whether they seem to require answers from logic or from experience.

When we have questions about what to do in specific situations we may look to general principles for guidance. Questions about ethics, politics, and law lead us to examine principles as well as the particular details of the situation. Yet even after we feel we have a grasp of the

principles that apply, when it comes to making decisions in a specific context we seem to jump from one type of reasoning to another. In instances like this we require a methodology that helps us link questions about probabilities with questions about principle.

Once we accept that we need not look to future experience in order to test a utopia, we are faced with the challenge of devising ways to assess claims about 'what we should do' in specific situations. We are inadequately equipped to analyze utopian claims unless we examine on what basis we offer reasons for or against our arguments. Do we react negatively because something seems improbable, impractical, or unrealistic? Or because we aren't able to make sense of it--to integrate it--within our present network of thought or consciousness? If the latter is the case then we may claim that what we are not able to integrate is impossible. We fail to see how it might be relevant to our present society at all. Utopias demand that we focus on both the possibility and the probability of new ideas.

7. *Utopias are yardsticks by which to measure societies in general.*

From different utopias we may get different standards by which to assess our present society. A utopia is more than a mirror held up to examine ourselves. If we

limit ourselves to looking at the reflection we have not made full use of the utopia. Like Alice, we too should walk through the looking glass and explore the new world before returning home--bringing with us the experience we have had. Utopias allow us to examine the roles played by ideals, goals, facts, values, and so on, in a 'living' environment--one in which relations are complex. In comparing ourselves with different utopias we are encouraged to compare the relationships between different variables in more than one context--to compare them among different networks of concepts and values. In this way all utopias play a role as measuring devices, although not all utopias need suggest the same way of measuring. By providing a perspective from which all beliefs and values can be assessed, utopian thinking encourages us both to form attachments to and to remain aloof from beliefs and values we hold.

8. *Utopias help us to understand the conceptual dimension of what we experience.*

Deciding to stay in the 'looking glass world', deciding not to return from it, is not an option open to us so long as we value our connections with the time and place whence we came. Breaking with the present means forfeiting the obligation to assess someone else's vision of utopia in light of our own background--conceptual and experiential.

We cannot experience a utopian vision in quite the same way that we experience our own lives--we must experience through imagination and reasoning. To the extent that our sense of identity is connected with our network of concepts and thoughts, uncritical support of a utopia has broader implications. Uncritically adopting a utopia as our own would require us to make a leap of faith. We would assume, in a way, a new identity but we would be unable to state our reasons for rejecting our old life.

The links between our world and the utopian world are both on the level of experience and on a conceptual level. We are 'carried away' by our experience when we give in to the enticements of a utopia, willing to forsake everything familiar and gamble on the unknown. On the other hand, our unwillingness to consider at all the possibilities a utopia presents indicates a closed mind. Our impulse to assess utopias on the ground of whether they are 'realistic' stems from both a reluctance to experience the utopia and a reluctance to consider the reasons and reasoning it proposes. The first test of utopias is conceptual but the first task of utopias is to get our attention.

9. *Utopias can help us learn how to expand our beliefs about what is possible.*

If we have attempted to honour a utopia by a serious reading, we will be faced with the problem of how to

integrate our experience and the ideas we have had while in the utopian world with the world into which we must re-enter. This problem is different from taking any other simple theory or hypothesis and trying to integrate it with the conceptual network in which we now function. We are faced with somehow integrating two competing conceptual networks which have claims that are not merely contradictory on a one on one basis but represent competing worlds.

It is meaningless to claim that our present conceptual network is better because it is somehow 'more real'. Whether we equate reality with truth, or with the types of connections we have with things external to us, or we simply believe that somehow what is real is more tangible, all these ways of assessing 'reality' are conceptual. On the other hand, we cannot fault the utopia for not being 'realistic' unless we assert that something the utopia claims is possible is impossible--not merely improbable.

A utopia implicitly argues that something we now view as impossible may only appear to be impossible because we merely try to add it to our present conceptual network without altering any of the other components. In asking us to hold two 'worlds' in our minds at the same time, a utopia encourages us to make conceptual connections between these two worlds. At the very least a utopia should make more flexible our beliefs about what is possible and what is not.

10. In using utopian models to compare competing conceptual networks we may learn another way to compare different societies with each other.

Utopias encourage us to be more hopeful about our present condition by making us more receptive to claims that previously appeared to be impossible. Believing there is no way to prove one conceptual network superior to the other we may choose to disregard reasoning altogether and make that leap of faith. Certainly some utopias might encourage this by promising a hardship-free life equivalent to our images of heaven on earth. From a philosophical perspective, however, there must be some way of assessing both the reasons put forward by the utopia and the implicit shadow it casts on the present. Surely if we are faced with two competing conceptual networks there is a way to keep these two worlds from colliding. Yet if we compare the problem we have approaching a utopia with the difficulty two present societies have in approaching each other, then we might begin to appreciate why 'collision', war, is not uncommon.

By leading us to practice 'belonging' to a society different from our own, utopian thinking may lead us to undertake trans-societal comparisons from a conciliatory rather than combative position. We don't know how to begin to understand other societies and still maintain sufficient distance to make judgements on our own criteria. If we read a utopia superficially, then we have behaved as boorish

tourists who compare everything they encounter with what is better 'at home'. In order to benefit most from a utopian encounter we must establish different patterns of thinking. In turn, learning to respond to utopias will help us to learn to understand and communicate with other societies and with those in our own society who appear not to share our beliefs.

11. *Utopias give us the opportunity to belong temporarily to a different conceptual network.*

We may believe that what we believe is better than what someone else believes simply because it is our belief. When we claim that our belief is more realistic or that the reasons we offer have not been successfully refuted we may not be re-iterating more than our close sense of identification with the belief we hold. Utopias address this attitude by encouraging a participatory reading, by encouraging us to adopt the utopia as our 'own'. By attempting to persuade us that what they claim is possible or that it has been done elsewhere or before our time, utopias attempt to become 'ours' in the sense of changing our consciousness, our network of thoughts and values. But they do not appeal to the sense of chauvinism that makes us believe that what we believe is better simply because we believe it. Since they are asking us to change our mind set, utopias need to be persuasive in order to get us to

listen at all. Exposure to utopias encourages us to examine what we admit as our reasons for or against when we consider the possibility of a different world. Utopias address our sense of identity by appealing for a change in our consciousness.

Summary

Utopian thought has the potential to help us know ourselves better. Bridging the gap between ourselves and others is more difficult when the focus is on societies rather than individuals. Most difficult to close of any is the gap between competing conceptions of utopias because each elaborates explicitly the connections it advocates between thoughts, value, and meaning. In considering what is possible and what is not, for what reasons, and how we decide what reasons count, utopian thinking provides a vehicle on a philosophical level to approach the problems of social change.

Chapter Two

The Philosophical Context of Utopian Thought

In the introduction to their comprehensive Utopian Thought in the Western World, F.E. and F.P. Manuel refer to "that myth of a heaven on earth which lies at the heart of utopian fantasy"¹. Wanting a heaven on earth, however, is but one way of describing the utopian impulse. In response to wondering what the best life would or could be like, we have used the concept of 'heaven on earth'. But first we needed to have a concept of heaven. 'Heaven on earth' makes no sense without the accompanying network of thoughts and meanings into which it fits. 'Heaven' must have some meaning for us before we try to imagine what 'heaven on earth' would be like. Although 'heaven on earth' appropriately describes some utopias, as a description of others it can only be applied as a metaphor for the expression of the utopian impulse.² Similarly, the concept of 'ideals' is itself dependent on the meaning we have given ideals throughout time. The role we allocate to ideals, the need we feel to have ideals, whether ideals describe a static, developing, or merely ongoing state of affairs are all tied to other concepts and values we hold. Reading Plato's references to ideals in The Republic we cannot help but bring to that

reading our familiarity with the 'history' of the concept of ideals in the time since Plato. The Manuels continue:

The conception of a heaven on earth that underlies Western utopian thought presupposes an idea of perfection in another sphere and at the same time a measure of confidence in human capacity to fashion on earth what is recognized as a transient mortal state into a simulacrum of the transcendental...Whether the persistence of the heavenly vision in a secularized world, if only in some disguised shape, is a necessary condition for the duration of utopia is one of the unresolved questions of Western culture. At that moment in time when utopia first came into existence faith in a christian heavenly paradise was still unshaken and the assertion of human talent to invent, discover, and devise was as if reborn.³

More's Utopia

The Manuels focus on utopias through the development of utopias in Western thought. These utopias reflect Western thought. When the age was one in which religious Christian consciousness prevailed, it is no surprise that utopias reflected that structure of thought. The relationships between God and people, between heaven and earth, dominated the visions of the best life. Similarly ideals, perfection, and everlasting qualities were important features of utopian visions.

The word 'utopia' came into use after More's Utopia became well known in the early 16th century. More explicitly invokes and evokes Plato's Republic as the rougher sketch in which he saw as implicit his more detailed vision of utopia. Many of the names More used in telling

his story are explicit descriptions in Greek of the characters.⁴ The narrator wonders whether Utopians might not be of Greek origin, since they take to the language, philosophy, and literature so easily.⁵ The name 'Utopia' is of Greek origin--depending on whether the 'u' combined with 'topos' is derived from the Greek 'ou' or 'eu', 'Utopia' can mean both 'noplacel' and 'perfectplace'.⁶

In Book Two of Utopia we hear Raphael Nonsenso⁷ describe the Utopian society from personal experience since he tells us he lived there for several years. More has Raphael first describe the ways in which Utopians take care of their immediate physical needs. It is only after these physical needs have been described that More goes on to describe the legal, political and religious aspects of Utopian society. We are encouraged to link 'mundane' subjects with the overall consciousness which prevails within society, emphasizing that everything we do can be seen to be expressions of our approach to living on a more contemplative level of existence. The success of their society, as shown by its happy, industrious, and productive people and the likelihood that this community "in all human probability, will last forever",⁸ is evidence that they are living by the right principles.

Utopians have "eliminated the root causes of ambition, political conflict, and everything like that,"⁹ and this has been done by organizing a society around

"communism minus money,"¹⁰ But the society is based on something more abstract than this. The Utopian society expresses a deep reverence for both the industrious application of human intelligence to the pursuit of knowledge,¹¹ and the limits of our intelligence in knowing the Supreme Being, "identical with Nature, that tremendous power which is internationally acknowledged to be the sole cause of everything."¹² The whole of the society is devoted to living 'plainly'--in the belief that something that is plain is closer to the truth than something that is hidden by clothing, by jewels, by make-up, or by delusions. Accordingly Utopians have a high regard for people saying what they really believe: "Nor are they terrorized into concealing their views, because Utopians simply can't stand hypocrisy, which they consider practically equivalent to fraud."¹³ Utopians follow the teachings of their founder/'creator'/first king, Utopos, who believed "even if there was only one true religion, and all the rest were nonsense, truth would eventually prevail of its own accord--as long as the matter was discussed calmly and reasonably."¹⁴ The process will uncover what truth there is to be known by humans and leave in its wake a trail of plainness--things will be what they seem to be. Utopians apply this process of reasoning to everything, using as reference points both what knowledge they have so far uncovered/discovered and the principles of their religion.

Although even in Utopia we cannot assume that things are what they seem to be, Utopian society is less 'dressed' than our own.

Care must be taken to condition humans so that they are prepared to accept the premises of Utopian society as their own. Utopos had a keen sense of understanding human behaviour. Humans are conditioned to believe what they believe by the types of ideas to which they are exposed from childhood.

If thoroughly absorbed in childhood, these ideas will persist through adult life, and so contribute greatly to the safety of the state, which is never seriously threatened except by moral defects arising from wrong ideas.¹⁵

Most crime can be prevented by a combination of the right material conditions and the right mental conditioning. Despite attempts at rehabilitation, some will still deviate and for the good of the whole of society these offenders must be eliminated: "if criminals prove recalcitrant then they're slaughtered."¹⁶ Despite the high value they place on human life, Utopians are confident that God approves of taking life under these circumstances. They see a threat posed to the society that reflects the truth embodied by Supreme Being and for the good of the society as a whole eliminate the threat. They do this also in light of the minute probability that they have erred in having the right beliefs. In their prayer they acknowledge this possibility:

...If I am wrong, and if some other religion or social system would be better and more acceptable to Thee, I pray Thee in Thy goodness to let me know it, for I am ready to follow wherever Thou shalt lead me. But if our system is indeed the best, and my religion the truest, then keep me faithful to both of them, and bring the rest of humanity to adopt the same way of life, and the same religious faith--unless the present variety of creeds is part of Thy inscrutable purpose...17

They are confident enough that the Supreme Being would somehow indicate if changes were required that they are prepared to act on their beliefs. They put at stake their own future in this life and in the next since no matter to what sect of the Utopian religion they belong, they hold two religious principles:

You see, in all their discussions of happiness they invoke certain religious principles to supplement the operations of reason, which they think otherwise ill-equipped to identify true happiness.

The first principle is that every soul is immortal, and was created by a kind God, Who meant it to be happy. The second is that we shall be rewarded or punished in the next world for our good or bad behaviour in this one.18

We may disagree with how facets of the Utopian society are put into practice. We may find it hard to understand how Utopians can be certain enough of what they believe they know that they are willing to wage war and take lives when they think these are justified. We might find ourselves drawing back with unease at having someone point out to us how we are even now conditioned to believe what we believe--as some react to the sight of their own blood. But

to argue with them about what they believe is to argue about whether someone else's pain is real. If we believe, as the Utopians themselves believe, that "no one is held responsible for what he believes", then the discussion could continue only if we also believed as they believe that "truth would eventually prevail of its own accord--as long as the matter was discussed calmly and reasonably."¹⁹

But as More has demonstrated, it is not always most productive to treat reasoning as if it operated in a vacuum, under laboratory conditions. We may offer reasons to counter their reasons but which reasons we each count as 'good' reasons will differ. More than mere persuasion, our task in arguing with the Utopians is to persevere in discussions until one side or both undergo a change in consciousness which will allow different reasons to be admitted as 'good' reasons. More himself was keenly aware that truth could be disregarded and its value go unrecognized. He described how sometimes deficiencies in an individual's character could be the cause of such injustices. In trying to persuade Raphael to seek public office More argues that society should benefit from what Raphael has learned. Raphael counters that what he has to say would be ignored--that councillors are too conceited to take his advice:

how well it 'fits with and justifies reality', where 'reality' is our interpretation of our legal practice as a whole.⁴

He contrasts 'ordinary', or 'working', theory with 'ideal' theory, which claims to hold for all cases.⁵ A working theory is practically oriented and speaks to only one social context.⁶ Working theories have their counterpart in academic elaborations which reveal "the true nature or character" of the theory.⁷ This is the "full" theory, the working theory made more concrete⁸ and is also, because it is society-specific, distinct from ideal theory. Academic elaborations of theory explore the details of how an abstract theory would be applied in the 'imagined' circumstances of a given society, details which people using that theory would not themselves need to explore in order to apply the working theory in a particular case.⁹ In proposing his own conception of law, Dworkin provides an academic elaboration of what he hopes will become a working theory for our society.

In the case of our law, a full theory will speak to both the grounds of law and the force of law.

These two parts must be mutually supportive. The attitude a full theory takes up on the question how far law is commanding, and when it may or should be set aside, must match the general justification it offers for law's coercive mandate, which in turn is drawn from its views about the controversial grounds of law. A general theory of law therefore proposes a solution to a

complex set of simultaneous questions. When we compare two theories, we must take into account both parts of each in judging how far they differ in their overall practical consequences.¹⁰

A full theory of law is political in the justification it proposes for legitimacy. It is not merely a theory about how the law should operate but elaborates our beliefs/convictions about why law has the power it does in our society. It is in this broad political sense that morality becomes foundational of law in our society.

A general theory of law for Dworkin is general because it focuses on "the main point and structure of legal practice"¹¹, not because it applies generally to all societies and all law. It remains society-specific because it does not address law without acknowledging that the law it addresses is native to a particular society--it has a history which differentiates it from 'ideal' theories of law. In the case of Anglo-American societies, Dworkin suggests that

...the most abstract and fundamental point of legal practice is to guide and constrain the power of government in the following way. Law insists that force not be used or withheld, no matter how useful that would be to ends in view, no matter how beneficial or noble these ends, except as licensed or required by individual rights and responsibilities flowing from past political decisions about when collective force is justified.¹²

On Dworkin's view we can only discuss abstract points and general theories from within a given society.

Dworkin interprets the above abstract point of law within Anglo-American societies because it is what he interprets our practice to express--"Our discussions about law by and large assume"¹³ that this is the case. But the abstract point is largely a device we use to establish a plateau on which discussions take place: "Neither jurisprudence nor my own arguments later in this book depend on finding an abstract description of that sort."¹⁴ The abstract point is a device, Dworkin argues, because we need not establish agreement in order to proceed from it. We may agree with him about what the most abstract point of our law is; or we may not. We are not debating what actually is the most abstract point. By suggesting that disagreement about this statement of the abstract point is not important, Dworkin believes that he is helping us to understand our law while at the same time not determining in any controversial way the direction of our ensuing interpretations. In offering this abstract point, he attempts to achieve the more important goal of creating a plateau on the abstract level which we use only in a neutral way to move on towards more detailed discussions and refined conceptions of law.

There is another sense, however, in which Dworkin's statement of the abstract point is not temporary or neutral but directs the argument which follows. For this particular discussion, for the arguments Dworkin makes in Law's Empire, no other statement of the abstract point of law would work

as well. The point he makes is that paradigms change over time and that we use different paradigms at different times in our practice. However, when we would use these paradigms we use them as if they were the only paradigm available to us--as if they were true in an absolute sense--and close our eyes to their changing nature because we know that our interpretations must be context-specific. In Dworkin's terms, we might say that we abstract from the temporary nature of paradigms in the same way in which we can concentrate on different parts/dimensions of the argument without always focusing on the whole.

Dworkin acknowledges the degree to which a statement of the abstract point of law gives direction to argument--he calls it an account "that organizes further argument about law's character."¹⁵ The abstract point is 'only' to be used as a stepping stone. Clearly, however, by including individual rights and responsibilities on the abstract level Dworkin weights future argument against more detailed conceptions of law which may locate rights and responsibilities on a more detailed level as opposed to the abstract level, if at all. Someone else might argue this interpretation fits our practice just as well. This particular abstract statement makes possible the division of our general theory of law into a part that deals with the grounds of law and a part that deals with the force of law--it introduces the moral dimension at a very basic level

of argument. Dworkin sees nothing wrong with this since this is how he himself interprets our practice. Constructive interpretation both is justified by our practice and itself must justify our practice.

Constructive interpretation

We identify 'reality' through constructive interpretation. Together, over time, we create a story of our practice. Many individual authors share in creating the overall story by adding their own interpretations in particular cases. Each new interpretation gives sense to and is given sense by the preceding interpretations, taken as a whole. Just as a chain novelist must decide whether or not her/his contribution departs from the 'real' novel, we can make this decision about competing interpretations of our practice only when we have an interpretation of our past/present practice to which we are able to add our part.

For [a chain-novelist] has nothing he can depart from or cleave to until he has constructed a novel-in-process from the text...Now suppose someone accuses you of rewriting the "real" novel to produce a different one that you like better. If he means that the "real" novel can be discovered in some way other than by a process of interpretation of the sort you conducted, then he has misunderstood not only the chain-novel enterprise but the nature of literature and criticism. Of course, he may mean only that he disagrees with the particular interpretive and aesthetic convictions on which you relied. In that case your disagreement is not that he thinks you should respect the text, while you think you are free to ignore it. Your disagreement is more interesting: you disagree about what respecting

this text means.¹⁶

We interpret in light of the past with an eye to the future only in so far as what we have interpreted to date will allow. It is with this interpretation of our practice, not simply 'our practice', that our new interpretations must fit. If no such interpretation can be made to fit, then, theoretically, a new novel begins. We re-interpret our past in light of a different future and begin again. Dworkin is convinced, however, that skepticism about our practice is at least at this point unjustified.¹⁷

On Dworkin's own terms, in order to assess his theory we must challenge his claim that his interpretation 'best fits and justifies/honours' our practice. On our terms, however, constructive interpretation should be included as part of our focus of analysis. It is one thing to argue with Dworkin from within the realm of constructive interpretation about whether Law as Integrity, (LAI), is the best conception among many competing interpretations and quite another to place constructive interpretation alongside other methodological approaches.

Integrity as a political ideal

Integrity "fuses citizens' moral and political lives."¹⁸ It guides our interpretations by making it possible for us to view the state as a moral agent and encourages us to view not only the state but other

individuals with the respect due moral agents. Integrity is an outgrowth of a concept of personal morality--we extend our concept of personal morality to our expectations about the ability of the state to act according to the principles we expect it to express.¹⁹ Through 'deep personification' of the state, when we view the state as a moral agent,

we insist that the state act on a single, coherent set of principles even when its citizens are divided about what the right principles of justice and fairness really are. We assume, in both the individual and the political cases, that we can recognize other people's acts as expressing a conception of fairness or justice or decency even when we do not endorse that conception ourselves. This ability is an important part of our more general ability to treat others with respect, and it is therefore a prerequisite of civilization.²⁰

In understanding law as 'integrity' we honour our practice by allowing the political ideals we interpret our society as a whole to hold to guide our present and future and at the same time 'justify' the history of our society by building on what has gone before.

Integrity, as a 'virtue', would be unnecessary in utopian theories.²¹ Utopian theories, on Dworkin's view, are without history and as such have no past or present practice with which to connect. When they build their societies they are governed by the working out of an ideal in reasoning and in imagination, building it from first principles, and not by how the ideal has shown itself in their society, in practice.

The great classics of political philosophy are utopian. They study social justice from the point of view of people committed in advance to no government or constitution, who are free to create the ideal state from first principles. So they imagine people living in a prepolitical state of 'nature' writing social contracts on blank slates. But real people in ordinary politics act within a political structure as well as on it. Politics, for us, is evolutionary rather than axiomatic; we recognize, in working toward a perfectly just state, that we already belong to a different one.²²

Integrity becomes a necessary political ideal for 'real societies' because of Dworkin's practical orientation. It is one of four virtues Dworkin interprets our practice to express, the other three 'political ideals/virtues' being fairness, justice, and procedural due process. The latter three are ideals that ordinary politics "shares" with utopian political philosophy²³. Dworkin seems to assume that we have a shared understanding of what a utopian political philosophy is. That LAI and utopian theories 'share' political virtues/ideals is significant only because Dworkin uses this so-called similarity to emphasize the need for integrity in his different theory.

Dworkin uses integrity to distance himself from utopian philosophy by making integrity more important, in terms of both theory and practice, than the other three 'virtues'. It is more important because it is 'derived from ordinary politics--it "has no distinct place in utopian axiomatic theory."²⁴ In other words, both because it is not tied to utopian philosophy in any way and because it is tied

to our practice, integrity is the answer to how to make a theory about society productive and meaningful. Assuming, as Dworkin does, that utopias are necessarily created to embody perfection, (in part at least because they are created by building a network of axioms which are no less than perfect because they have yet to be made concrete), individuals within the utopian world could not look to their past to provide justification through coherence. On his view these individuals must, at least in a sense, deny their past and thus devalue it in order to assert the value of the new utopian society and justify the non-evolutionary break. Practice is not necessarily more important than theory, in an abstract sense, but what Dworkin understands to be unrealistic theory is ideal in the worst sense. As a realistic concept, coherence would be internal to the new utopian society but would not require that the new society have a connection with the old. It would hold within the society, but in an atemporal way.

Integrity would not be needed as a distinct political virtue in a utopian state. Coherence would be guaranteed because officials would always do what was perfectly just and fair. In ordinary politics, however, we must treat integrity as an independent ideal if we accept it at all, because it can conflict with these other ideals.²⁵

It is on this point that Dworkin argues his own proposal is not utopian--it requires a connection with the past in order to acquire meaning and justification. Integrity guides our interpretations of our present practice

in a way that the other political ideals cannot. In their (potentially) 'fullest' sense they don't fit our practice because we have yet to give meaning to what this 'fuller' sense is. Through the coherence integrity gives our social lives on a moral level and in the practice which reflects our political ideals we can move gradually towards a fuller expression of all of our political ideals. Integrity is alive. It speaks directly to our practice and guides our interpretations and activities so that they are evolutionary. It is the link between yesterday and today and tomorrow. Utopian politics lacks this link and will always be an expression of artificiality and ideality.

Integrity is at once the expression and guides the expression of respect that individual members of a community should have for each other.²⁶ This respect plays out as a form of consistency--we extend our respect to individuals and to the state in the same way when we seek to express principles of political morality. We expect similar cases to be treated by our courts in similar ways. But we also expect that all cases, taken as a whole, can be interpreted as expressing our political ideals--as a statement of the principles we interpret our state to hold as a moral agent itself. Integrity is different from consistency because it speaks to and from a level of morality that mere consistency cannot. "Integrity is about principle and does not require any simple form of consistency in principle."²⁷

Integrity regulates by directing us to find the right balance, the right proportion, in which to apply the other three political ideals. For example, "If we believe that integrity is...[an] independent ideal...then we may well think that fairness or justice must sometimes be sacrificed to integrity."²⁸ In specific contexts integrity allows us to argue about what political ideals should be interpreted how and at the same time protects our arguments from disintegrating into disagreements about which political ideals in general our practice as a whole should interpret.

Productive Disagreement

Integrity fosters discussion and disagreement about controversial issues. It permits debate to take place productively without posing a threat to the grounds of society as a whole. The convictions members of a community share, through the state understood as a moral agent, allow them to dispute controversial interpretations under the wider umbrella of respect for interpretations with which they do not agree. Once we allow 'genuine' disagreement, we make progress possible because we have made argument possible and argument is what law is all about.

Of course, law is a social phenomenon. But its complexity, function, and consequence all depend on one special feature of its structure. Legal practice, unlike many other social phenomena, is argumentative. Every actor in the practice understands that what it permits or requires depends on the truth of certain propositions that

are given sense only by and within the practice...29

If everyone shared the same conception of law, we could proceed to arguing about whether a law applies in a particular case, without always backtracking to arguments about the grounds of law. We are "bound in spirit while we debate what we must therefore do."³⁰ We would disagree about empirical rather than theoretical questions of law ³¹ and these types of disagreements are the ones which allow us to move forward as a community.

Of course this process of abstracting from one kind of disagreement to focus on another would be unsuccessful if the parties disagreed too much about the grounds of law, if one rejected everything the other took as paradigmatic. It would make no sense to debate how far law should be obeyed if one side thought that the enactments of Parliament were the only source of law and the other side gave that power to the Bible. But if many people in any community disagreed that far about grounds--if they shared no paradigms at all--civil disobedience would be the least of their problems.³²

Change in society comes from the choices we make. We can best decide among interpretations if we can disagree openly and arrive at decisions after disagreements are settled, if only temporarily or issue by issue. Integrity creates a cohesive environment which allows us to have an overall perspective from which we can agree to focus on particular parts and disagree on how they apply in particular situations. This environment is as stable as the overall interpretation/story of our practice, even if within that

story paradigms change and disagreements take account of these changes.

Law as integrity therefore not only permits but fosters different forms of substantive conflict or tension within the overall best interpretation of law.³³

Disagreements could not take place in a society if the society were truly utopian. On Dworkin's view of utopias there are no further choices to be made once the utopian society has been created. Productive disagreement is another way of emphasizing that LAI is geared towards real societies with real problems to discuss. There is no place for integrity in utopian theory because there is no need for it. But if integrity does not belong in utopian theory, how are we then to understand the distinction Dworkin draws between 'inclusive' and 'pure' integrity?

Inclusive and Pure Integrity

The distinction Dworkin draws between 'inclusive' and 'pure' integrity allows him to approach utopian philosophy from what he understands to be a realistic approach. Where inclusive integrity creates the environment in which change is possible, pure integrity elaborates where we want the change to take us from the point of view of our political ideals/virtues. Pure integrity is not independent of the practice but dependent on it and tied to the meaning of inclusive integrity within that community.

After all, it's a natural instinct to be charmed by one's own productions. That's why raven chicks are such a delight to their parents, and mother apes find their babies exquisitely beautiful. So there you have a group of people who are deeply prejudiced against everyone else's ideas, or at any rate prefer their own...Failing all else, their last resort will be: 'This was good enough for our ancestors, and who are we to question their wisdom?'²⁰

In the Utopian council, all debate on resolutions must wait for a day to prevent people from speaking before they had given the resolution due thought:

Otherwise someone's liable to say the first thing that comes into his head, and then start thinking up arguments to justify what he has said, instead of trying to decide what's best for the community. That type of person is quite prepared to sacrifice the public to his own prestige, just because, absurd as it may sound, he's ashamed to admit that his first idea might have been wrong--when his first idea should have been to think before he spoke.²¹

Even in Utopia the system must be set up to anticipate the foibles of human nature. For as More states in Book One, even he cannot foresee/imagine the time when human beings are perfect.²² In organizing the best society we must assume that human nature, "being so very unpredictable"²³ will be counted as a variable. In his summation Raphael points to 'pride' as the most formidable villain:

...I've no doubt that either self-interest or the authority of our Saviour Christ...would have led the whole world to adopt the Utopian system long ago, if it weren't for that beastly root of all evils, pride...But as this fault is too deeply ingrained in human nature to be easily eradicated, I'm glad that at least one country has managed to develop a system which I'd like to see universally adopted.²⁴

But there are also limits on our thinking that are not necessarily due to pride, that aren't imposed by human nature, but rather can be traced to some type of conditioning. The 'prejudice' against new ideas may be because we are all limited, though perhaps to different degrees, in our ability to imagine what might be possible. More says to Raphael:

Frankly, I don't see the point...of giving advice that you know they'll never accept. What possible good could it do? How can they be expected to take in a totally unfamiliar line of thought, which goes against all their deepest prejudices?²⁵

In Book One, Raphael says to a skeptical More:

You're bound to take that view, for you simply can't imagine what it would be like--not accurately, at any rate. But if you'd been with me in Utopia, and seen it all for yourself, as I did--I lived there for more than five years, you know, and the only reason why I ever left was that I wanted to tell people about the New World--you'd be the first to admit that you'd never seen a country so well organized.²⁶

More's answer to this problem of limited imaginations was to write about Utopia as a first person account. He understood that in order to have a hearing he must find a way past or around our prejudices. Leading us to believe, at least temporarily, that we are hearing a description of a newly discovered country²⁷ More makes us more receptive. In the argument between More and Raphael in Book One, when Raphael claims that "There's no room at Court for philosophy",²⁸ More counters:

There's certainly no room for the academic variety, which says what it thinks irrespective of circumstances. But there is a more civilized form of philosophy which knows the dramatic context, so to speak, tries to fit in with it, and plays an appropriate part in the current performance...Surely it would be better to keep your mouth shut altogether than to turn the thing into a tragicomedy by interpolating lines from a different play? For, even if your contribution were an improvement on what had gone before, the effect would be so incongruous that you'd ruin the whole show. No, do the best you can to make the present production a success--don't spoil the entire play just because you happen to think of another one that you'd enjoy rather more.²⁹

More has altered the form of his presentation from 'academic philosophy' to an indepth, fictional, travel account so that it can be received by a wider audience. As fond as we may be of the society with which we have forged our own connections we are encouraged to shed our prejudices, to be wide-eyed sailors in the tradition of Ulysses and Plato,³⁰ discovering the world around us. We want to know more. Given that we can benefit from such a tale, does it matter if Utopia is a society in time and place? Or perhaps this is a variation on the philosopher's lie to which Raphael refers³¹ and which is reminiscent of the necessary lie--the practical fable--in Plato's Republic.³²

Utopias as a genre

The word 'utopia' is used not only to describe the utopias that patterned themselves after More's Utopia but also to describe utopias that preceded the naming of the

genre. More himself described Plato's Republic as the model on which he crafted his utopia.³³ Since, relative to More's Utopia, Plato's Republic was both more abstract and pre-Christian, as a model for Utopia it must have provided More with some other form of guidance.

Plato's Republic, written in the 4th century, B.C., was in philosophical response to ideas put forward before him. His concept of 'ideals', providing a stable counterpoint, evolved in response to the pre-Socratic enchantment with the roles played by opposites and by dynamic change. But they also derive from the Pythagorean concept of the world as cosmos, mathematically ordered, harmonious (literally, musically) in its expression of this true order. Pythagoreans expressed a utopian vision of the world seen from the perspective of mathematics and music. Their utopian vision, again in response to the preoccupation with change, was made through their concept of the soul as that which gave humans immortal qualities³⁴ and linked them with the highest order. Once that link was claimed, the lives of humans could be linked to, compared with, and patterned after the lives of immortals.

...The doctrine of harmony is meant to apply to the social order as well. This order too is made up of diverse elements: good and bad, well-born and base-born, rich and poor. If the social order is to reflect the nature of the world-order as a whole, these diverse elements must be bound together in harmony and friendship...Order and justice are possible only where this harmony, expressed in friendship and the sharing of goods

in common, already exists.³⁵

Although we have no one body of work from the Pythagoreans that would itself constitute an argument for and description of a utopia, the vision can be gleaned from the concepts they put forward. The philosophical dimension of utopian thinking is represented here in its early stages. The concern with the best life, the concern with how society should be ordered, the concern with how individuals in that society should live, are all important features of any utopia. In describing the connection between Plato and the Pythagoreans, Robinson says: "Plato says that Pythagoras taught 'a way of life,' and we can now see what the purpose of that way of life was. It was to live in accordance with what is highest in us, remembering always its divine origin."³⁶ Utopias prescribe a way of life that is justified by a body of concepts, a network of thought, a view of the world. What emerges as utopia is a philosophy of life and living.

The influence of Christianity on the utopians of 16th century Europe can be traced back to Pythagoras. Speaking of both Plato and Aristotle, Cornford remarks on the strength of the continuity of their ideas in Christianity:

In spite of certain heretical doctrines, they might have been canonised in the Middle Ages, had they not happened to be born some centuries before the Christian era. Behind them both is Socrates, who perhaps would have waited longer, to take his

place in the company of the Saints with Joan of Arc. Pythagoras also would have a strong claim; for he furnished the clue which led Plato to expand Socrates' principle of aspiration into a system of the universe.³⁷

There is also evidence that More himself saw the earlier Greek development of thought as closer to 'the truth' than the Latin, Rome-centred development of Christianity. Aside from his frequent references to Plato and to the natural affinities Utopians had for Greek, in Book One of Utopia More has Raphael say quite explicitly that the more 'modern' developments are hypocritical.

If we're never to say anything that might be thought unconventional, for fear of its sounding ridiculous, we'll have to hush up, even in a Christian country, practically everything that Christ taught. But that was the last thing He wanted. Didn't He tell His disciples that everything He had whispered in their ears should be proclaimed on the housetops? And most of His teaching is far more at variance with modern conventions than anything I suggested, except in so far as His doctrines have been modified by ingenious preachers--doubtless on your recommendation!

'We'll never get human behaviour in line with Christian ethics,' these gentlemen must have argued, 'so let's adapt Christian ethics to human behaviour. Then at least there'll be some connexion between them.'

But I can't see what good they've done. They've merely enabled people to sin with a clear conscience...³⁸

The point is that the types of utopias being written were closely tied to the development of philosophy in general. The expectations of what a good life, what the best life, should be are tied to philosophy. 'Heaven on earth' is a

way of elaborating the connection between humans and what is immortal. Depending on where the focus of philosophy lies, utopias in another era might express the tension instead as that between the known and the unknown, the conscious and the unconscious, the visible and the hidden, the fleeting and the everlasting, the reflection and reality, life and death, and so on. Utopias, like philosophy itself, are the seat of the tensions we identify. Once utopias were identified and named as a genre, as a form of presenting our visions of better societies and the context within which these visions make sense, their connection with Christianity became secondary to their connection with philosophy in general. Accordingly, the connections the 16th century utopias have with ideals and perfection are not defining connections but are the expressions of the philosophy of a society. A utopia in today's philosophical context need not treat ideals and perfection in the same way at all as did utopias written in another age. Neither need utopias within each age be the same--they may well reflect the same approach to imagining how life could be better but to approach them with that assumption in mind is to prejudge and to risk misunderstanding. It is not so much the 'what' but the 'how' that relates utopias to each other. If that were not the case, there would be no class of utopias, no 'utopian thinking', since the subject matter has been so diverse:

Utopians of the past have dealt with war and peace, the many faces of love, the antinomy of need and desire, the opposition of calm felicity and dynamic change, the alternatives of hierarchy or equality, the search for a powerful unifying bond to hold mankind together, whether universal love or a common identification with a transcendent being. They have either made aesthetic and individual creativity the key to existence or all but passed it by. They have concentrated on physical or mental pain as prime evils. At other times they have analogized the conduct of civilized men with animal or 'primitive' behavior, with machines or cosmic forces. They have measured the changing needs of different stages in the epigenetic cycle and have conceived of better ways of being born and dying. The optimum unit of living has been weighted--the isolated self-sufficient individual, the family, the city, the nation, the world. Material and psychic preconditions of freedom have been explored, and the imperative of survival of the species has been proclaimed as beyond freedom and dignity.³⁹

It is the creation of new relationships among different variables that is common to all utopias. No matter what facet of material, psychological, or spiritual life is primary in any given utopia, the context in which it is offered is one in which the possibility of a different world is explored in a way that challenges our present consciousness.

Wells and A Modern Utopia

Wells, in A Modern Utopia specifically challenges the Platonic-Christian tradition of utopian thinking:

But indeed, the science of logic and the whole framework of philosophical thought men have kept since the days of Plato and Aristotle, has no more essential permanence as a final expression of the

human mind, than the Scottish Longer Catechism. Amidst the welter of modern thought, a philosophy long lost to men rises again into being, like some blind and almost formless embryo, that must presently develop sight, and form, and power, a philosophy in which this assumption is denied. ...In the reiterated use of 'Unique,' you will, as it were, get the gleam of its integument; in the insistence upon individuality and the individual difference as the significance of life, you will feel the texture of its shaping body. Nothing endures, nothing is precise and certain (except the mind of a pedant), perfection is the mere repudiation of that ineluctable marginal inexactitude which is the mysterious inmost quality of Being. Being, indeed!--there is no being, but a universal becoming of individualities, and Plato turned his back on truth when he turned towards his museum of specific ideals. Heraclitus, that lost and misinterpreted giant, may perhaps be coming to his own...40

There will be everlasting features in the modern utopia, (for instance peace₄₁), but they will not be everlasting for the same reasons as in the old utopias. The previous utopias sought to pattern human life after models which described a system of truth from which the principles of living could be drawn. Peace was not merely a 'good' because we desired it but because it came with the package. But when Wells describes his own vision of utopia, he still describes a system. Within this system we still need money, states, laws, businesses, and property. Even though Wells' utopia alters the meaning of such features of life, the context within which these meanings change is still itself a network of meaning--a system of thought. Despite Wells' change in focus from being to becoming, he must still

describe the network of ideas, meanings, and values within which the 'becoming' takes place. With this change in focus, however, the question now becomes how to describe a social order that is a system yet is fluid, an order that is an order but is not rigid. Wells responds to this by defending the need to make divisions, the need to differentiate in order to put forward ideas, and the need to present visions and to make claims about them.

This infinite world must needs be flattened to get it on one retina. The picture of a solid thing, although it is flattened and simplified, is not necessarily a lie.⁴²

Wells' approach relies on the reader to reshape the flattened form, to see the picture as complex again--as 'whole' as it was before it was differentiated by Wells. His utopia relies heavily on people willing their utopia to exist⁴³, on a competitive conception of human nature⁴⁴, and on a rejection of nature as a model for human behaviour⁴⁵.

Indeed Will is stronger than Fact, it can mould and overcome Fact. But this world has still to discover its will, it is a world that slumbers inertly, and all this roar and pulsation of life is no more than its heavy breathing...My mind runs on to the thought of an awakening.⁴⁶

In claiming that Will is stronger than Fact, Wells is treating an old problem from a different perspective. We may not appreciate the practical importance of ideas--the impact that ideas can have on our world. Wells has bemoaned the lack of new beginnings in present society--the lack of hope in the future.⁴⁷ Hope is expressed in the ideas we have

about how our world would be better. Hope is what Wells offers in his ideas--even if it must be presented in its 'flattened' form.

In separating purposes and goals from ideals, Wells addresses a tension between having no where to go and having only one place to go, the tension he understands the Republic to represent. His solution is to emphasize the link between purpose and will. "If we are to have any Utopia at all, we must have a clear common purpose, and a great steadfast movement of will to override all these incurably egotistical dissentients."⁴⁸ Ideals in the Platonic sense require knowledge more than human will.

Wells offers his modern utopia in contrast to the ordered utopias of the past. His solution is to take the emphasis from being and place it on becoming, to take the emphasis from aspiring to a true order of the cosmos and place it instead on what he understands the needs of humans to be. But as is evident in his reference to Heraclitus, the problems he addresses are age old problems of philosophy, the solutions novel only because they take place on a utopian plane dominated for so long by utopian descendents of More and Plato. Considering the variety of utopias created along that earlier model, Wells' utopia may be considered as only one of several other ways to respond to the utopian tradition.

In the next chapter we will consider Dworkin's Law's

Empire as another of the 'modern' responses to the utopian tradition. Dworkin specifically contrasts his work with utopian thinking.⁴⁹ I agree that, Dworkin's Law's Empire is unlike those utopias patterned after More and Plato. But this does not mean he cannot also be a 'utopian thinker', more in the tradition of Wells. Viewing the work from the perspective of utopian thinking will help us to understand why it is important to Dworkin that the work not be labelled utopian. This in turn will help us to understand how and why he has proposed Law's Empire.

Chapter Three

Dworkin and Law's Empire From a Utopian Perspective

In Utopian Thought in the Western World, the Manuels comment that "Paradoxically, the great utopians have been great realists."¹ Dworkin wants to be known as a realist rather than a utopian but the one does not necessarily exclude the other. The reasons for Dworkin's disdain of utopias become evident when we examine his understanding of what 'utopian' means. For him, to be utopian is to manifest the primary ills which his proposal is designed to correct: ideal theory, non-evolutionary change, and axiomatic thinking. Dworkin tries to avoid that approach to progress, to social change in general, which requires that we begin with a blank slate.² And even were we to begin from scratch, we would still not have incorporated into our thinking the means to move on.

Dworkin attempts to alter our consciousness by proposing a new way of thinking not merely about law but about ourselves and our society and change in general. Law for Dworkin is not merely a rigid set of rules by which we organize our society, but a living concept which affects us directly by altering our lives. Law is more than judges and courts and lawyers. As he begins Law's Empire:

We live in and by the law. It makes us what we are: citizens and employees and doctors and spouses and people who own things. It is sword, shield, and menace: we insist on our wage, or refuse to pay our rent, or are forced to forfeit penalties, or are closed up in jail, all in the name of what our abstract and ethereal sovereign, the law, has decreed.³

Dworkin places great importance on explaining and justifying legal rights. For the purposes of this paper, however, we are interested in how Dworkin's understanding of utopias affects his proposal in a general way. I will argue that Dworkin's (mis)understanding of utopian thinking is reflected in the way in which he constructs three main structural features of his proposal: integrity as a political ideal, law's optimism, and imposing purpose/best light through constructive interpretation. Law as Integrity, the conception of law Dworkin proposes for Anglo-American societies, is itself an ideal model of law.

A Theory of Law for our Society

Dworkin walks a fine line between our traditional concepts of theory and practice. In dialectical terms, what he describes is a praxis in which we are able to make our existing society the best it can be by applying our new conception/theory of the law. But in Dworkin's case, theory and practice merge not in a dialectical sense but because we alter our understanding and expectations of each. The theory Dworkin offers is one which we continually test for

The type of integrity we have examined to this point is what Dworkin calls 'inclusive'. It is inclusive integrity he elaborates in the body of Law's Empire. Inclusive integrity directs those who make interpretations on a day to day level, potentially constrained by the practice they seek to interpret. In its demand for consistency on both practical and moral dimensions, the constraint imposed by inclusive integrity is regulatory and relative to how the interpreter might otherwise make an interpretation by wanting to apply each political virtue to its fullest extent. Dworkin cites two 'institutional' examples of constraint: strict doctrines of precedent³⁴ and legislative supremacy³⁵ which "any successful general interpretation of our legal practice must recognize."³⁶ Other types of constraint come from procedure in which a judge would sometimes "accept substantive inconsistency to keep faith with more procedural principles,"³⁷ Still another constraint involves keeping faith with the classification of different departments of law which any individual judge may want to see interpreted differently in light of his convictions about the political ideals/virtues of the practice.³⁸ The effect of all these constraints is to put into a state of conflict the convictions about political ideals/virtues on three levels: as they are held by individual members of the society, by the society seen as a moral agent, and in a concrete way through their expression

by the practice to date.

Inclusive integrity prohibits any one interpreter from breaking with the practice to date in order to implement what may be a fuller expression of a political ideal--"he would violate integrity himself if he were to ignore the decisions [previous judges and law-makers] actually made."³⁹ Justice, fairness, and procedural due process have, each of them, the force of conviction creating a type of obligation to respect them. It is a question of finding the 'right balance' among these ideals, as they are held together and not individually by a community. From the point of view of the overall interpretation of a practice "proper attention to one of these virtues in an overall account of law will sometimes force compromise in the level of integrity that can be achieved in another."⁴⁰ In practice, inclusive integrity will result in a balance that means that none of the other three political ideals will be expressed to its fullest. Dworkin calls this a "compromise in the level of integrity"⁴¹ with respect to any single political ideal. Fairness or justice may be sacrificed to procedural due process for the sake of the integrity of the interpretation as a whole.

Where inclusive integrity describes what actually happens, Dworkin describes a "more abstract calculation"⁴² in which 'pure' integrity plays a role. The interpreter imagines what the best interpretation would be if there were

no constraints, of the sort discussed above, imposed by the practice. This interpretation cannot be considered viable in practical application because it ignores the constraints imposed by the practice but it is still tied to the practice in every other way. It is different from imagining either what could be our political ideals, (whether Dworkin has identified the same ones we would identify), or the meaning political ideals might have without the context of that particular practice. It is abstract not because it is 'universal' but because it describes the direction the law of a given society may take but will not take unless we actively pursue it.

Dworkin assigns the political ideal of justice the task of working through the constraints imposed by practice with an eye towards legislative enactments that will eliminate existing constraints altogether.⁴³ It is through justice that inclusive integrity will become closer to pure integrity. 'Pure law' is defined by pure integrity.

[Pure law] consists in the principles of justice that offer the best justification of the present law seen from the perspective of no institution in particular and thus abstracting from all the constraints of fairness and process that inclusive integrity requires....This purified interpretation...declares how the community's practices must be reformed to serve more coherently and comprehensively a vision of social justice it has partly adopted...⁴⁴

Dworkin has found it necessary to posit something that is different from what our practice now is in order to explain

how our practice can become better. The ties between pure law/integrity and our practice are more loose than those between inclusive integrity and our practice, but that they exist at all, even in an "attenuated sense"⁴⁵ makes it possible for him to argue that on his own terms his proposal is not utopian.

What makes Dworkin's concept of ideals different from what he understands to be the role of ideals in utopian theory is that he claims the ideals he presents are interpreted from within our present practice and as such already have meaning for us, if we were only to understand them better. On his view, utopian theories know no constraints in how or from where they derive the ideals which shape their societies. The constraints on ideals in LAI come not only from the practice but from the integrity of the interpreter, as moral agent⁴⁶. It is what we make of the ideals, conceptually and in a practical way, that Dworkin attempts to bring under the methodology of constructive interpretation. In Law's Empire ideals are tools, temporary and never absolute, because without the context of the practice in the best light of which they are interpreted, they have no meaning.

Imaginary ideal examples

Dworkin incorporates the use of ideal models into his proposal in much the same way and for the same reason

that he draws a distinction between pure integrity/law and our practice. Models, ideal examples, and paradigms are devices which have no meaning except in the context of the interpretive approach. Ideal models, like the models of community Dworkin describes⁴⁷ or the distinctions among different interpretive stages⁴⁸ or even like the distinction between the two dimensions of 'fit' and 'justify'⁴⁹ can be legitimate tools for analysis once the overall framework to establish their legitimacy is in place. These devices all play their role relative to interpretation--they help us to make our interpretations and to decide among competing interpretations. Dworkin calls these types of models 'analytic devices'--they help us to classify, clarify and organize. But when we use them we interpret. For example, we interpret what stage of interpretation we might now be in by referring to the extent of agreement about a particular practice⁵⁰, or which of the model communities our own community might be like.⁵¹ It is interpretation that makes what is 'ideal' for Dworkin different from the concept of ideality he rejects, both in how he describes the creation of these analytical devices and in how we make use of them when we apply constructive interpretation.

The main distinguishing feature of Dworkin's concept of ideality is its recognition that models are devices/tools that are not to be understood as divorced from the context in which they are developed. In that sense they are

temporary--paradigms change as the context changes. Constructive interpretation is used to justify the use of paradigms as models in just this temporary way because it sees these paradigms as potential sources of controversy and disagreement--sources of what generates change in our lives and material we need to understand in order to make choices. What is a paradigm, what we appear to agree on as a social practice, during one stage of interpretation may be controversial during another. Paradigms may make the task of analysis possible but we should never assume a paradigm to be more than a device:

There is an important difference between these paradigms of interpretive truth and cases in which, as philosophers say, a concept holds "by definition," as bachelorhood holds of unmarried men. Paradigms anchor interpretations, but no paradigm is secure from challenge by a new interpretation that accounts for other paradigms better and leaves that one isolated as a mistake.⁵²

We may agree on what is a paradigm today and not tomorrow. In an interpretive society a new paradigm will emerge. The claims we make based on these paradigms hold not because of demonstrative logic but because they are context-specific and would not exist without our agreement that they do. A claim is not "timeless" but "holds in virtue of a pattern of agreement and disagreement that might...disappear tomorrow."⁵³ While a paradigm may represent a model or an expression of our political morality, the paradigm itself is not only liable to change but is expected to change in a

vital society. For example, the rule that men must rise when a woman enters the room might one day be called "the deepest possible discourtesy."⁵⁴ From that day forward, no interpretation that does not account for this paradigm will be ruled ineligible on this count but another will take its place. The overall interpretation of the practice will not be threatened; the story will continue.

Dworkin has created 'Hercules' as an ideal example of an imaginary judge with superhuman powers who accepts law as integrity and constructive interpretation. It is Hercules who leads us through the elaboration of Dworkin's conception of law as integrity. Hercules 'works' as a device not because we imagine him to be a separate ideal but because he is context bound to law as integrity and the practice he interprets. As a model, he provides the paradigm case for what would be the best elaboration of law as integrity for our society. But he is not a paradigm in the same sense as the rule about men rising. To be useful as a paradigm, we must still agree that Hercules is the best example of a judge under LAI, but in this case our agreement seems more central. Without law as integrity, Hercules would make no sense. But the reverse seems to hold as well. In a society which accepts LAI, to disagree about whether Hercules is the best example would be to challenge the conception of LAI itself--it would threaten the interpretation of our practice as a whole. Hercules is the

fullest expression of LAI, an ideal example used to elaborate the structure of our arguments under LAI. The usefulness of Hercules in this sense is in no way dependent on whether he ever has existed or will exist as a person.

No actual judge could compose anything approaching a full interpretation of all of his community's law at once. That is why we are imagining a Herculean judge of superhuman talents and endless time. But an actual judge can imitate Hercules in a limited way...In practice even this limited process will be largely unconscious: an experienced judge will have a sufficient sense of the terrain surrounding his immediate problem to know instinctively which interpretation of a small set of cases would survive if the range it must fit were expanded. But sometimes the expansion will be deliberate and controversial.⁵⁵

The structure of process which Hercules elaborates holds when we compare Hercules to an experienced 'real' judge and whether or not the task Hercules and the actual judge undertake is monumental/controversial. We can see these processes better when we use Hercules as a tool. But Hercules, as an ideal model can be viewed from many different levels. Hercules proceeds in a way that actual judges cannot. The process which Hercules undergoes to arrive at the decisions he makes is the process we must all go through, or at least attempt to imitate, in order to make and decide among competing interpretations of our practice.

It is through the use of Hercules that Dworkin is able to draw a distinction between different types of practical constraints. The types of institutional and procedural constraints, (imposed by the practice), that play

a role in the distinction between inclusive and pure integrity, from the perspective of political ideals/virtues, are different again from two other types of constraint which are brought to light by Hercules. Unlike the rest of us, Hercules is not subject to practical constraints related to the limitations of mortal capacities for analysis. But Hercules is subject to practical constraints which cause him to make decisions which take their impact into account. Hercules is justified in altering his interpretation of political ideals and virtues when the context demands it. The difference in type of practical constraints is between those constraints we cannot change so easily, such as the limitations on mortal capacities for language, argument, and analysis, and those we can strive to change over time, such as the elaboration of the political ideals in our practice and the perceived need to include considerations about consequences.

Hercules serves our purpose because he is free to concentrate on the issues of principle that, according to law as integrity, constitute the constitutional law he administers. He need not worry about the press of time and docket, and he has no trouble, as any mortal judge inevitably does, in finding language and argument sufficiently discriminating to bring whatever qualifications he senses are necessary into even his initial characterizations of the law. Nor, we may now add, is he worried about a further practical problem that is particularly serious in constitutional cases. An actual justice must sometimes adjust what he believes to be right as a matter of principle, and therefore as a matter of law, in order to gain the votes of other justices and to make their joint decision sufficiently

acceptable to the community so that it can continue to act in the spirit of a community of principle at the constitutional level. We use Hercules to abstract from these practical issues, as any sound analysis must, so that we can see the compromises actual justices think necessary as compromises within the law.⁵⁶

It is Hercules himself who adjusts and compromises--just as LAI adjusts and compromises. It is Hercules, the imaginary example as model, who elaborates the differences between inclusive and pure integrity/pure law. This is different from the compromises which result from mere mortals attempting to emulate Hercules. Hercules is ideal relative to mere mortals. But Hercules' own attempts at interpretation reflect an interplay between our practice and a further level of ideality. Those constraints we 'must' impose on our political ideals by adhering to our present practice and those we 'must' make which take into consideration the consequences of a decision show Hercules battling on a different ground. Hercules demonstrates his allegiance to his practice by turning his back on something else. Dworkin has created a shadow partner for LAI in postulating a different kind of ideality not only for pure integrity or pure law but for law in general as a social practice.

The Ideal Dimension of Law's Empire

In the same way that he uses Hercules, in proposing LAI Dworkin proposes an ideal model of 'law' to help us to

understand the role we all could/should play as individual members of a community. It is interpretation that allows attitude to play a major role in Dworkin's proposed concept of law. And this is what makes Dworkin's proposal different from other theories of law. He is describing not merely 'law' in the sense in which we ordinarily understand it, but the ideal attitude that members should have toward their community. It is integrity, the ideal attitude and degrees of this ideal attitude, which would make the conception of law Dworkin proposes 'work'. If we cannot have the ideal model of attitude that Dworkin presents, then we should at least attempt to imitate it.

It is on this central feature of attitude that we might challenge how well Dworkin's proposal 'fits' with our present practice. Do Anglo-American societies now have the type of citizen required by LAI? Or is Dworkin arguing that it would not be difficult for all of us to become citizens who self-consciously accept integrity and all it represents so long as he showed us the reason why we should and elaborated the positive consequences of such action? Does LAI require a more moral and educated citizen than is now the norm? Dworkin would say this is an interpretive question--what kind of people are our citizens now, 'properly understood', and seen in their best light. But if Dworkin is arguing that we should become something we are not now, then he is placing himself along side other

theories of society which argue that if only we were something or other, or knew this or that, everything could be better. How to create moral beings within society has been a central question not only of utopian theories but of all civilizations, many of which are now long forgotten. To assume that the conditions already exist is a statement of naiveté of massive proportion. Dworkin seems to be arguing that even if we are not yet there, we are close enough that we have nothing to lose by trying. If we see ourselves in our own 'best light', making of ourselves the best possible example of citizens within a society, what have we got to lose?

As with Hercules, the ideal attitude need not really "exist" in the way in which Dworkin has outlined it--not every member of society need self-consciously adopt LAI in its fullest. But Dworkin has provided our society as a whole with a picture, an example, and a destination of what the ideal attitude, the ideal citizen, and law, ideally, should be.

Law's Optimism

In the absence of proof to the contrary, we are obliged to interpret our practice in its 'best light'--to 'honour' it. Dworkin would admit as proof an interpretive argument showing that there is no interpretation we could make that both elaborates the political ideals we believe

our society to hold and fits our practice well.⁵⁷ In proposing LAI Dworkin himself offers an interpretation which he argues satisfies both criteria. He places the burden of proof on the critic/skeptic. The optimism which we express when we interpret our practice in its best light has to do with both the nature of the practice of law and with interpretation itself. In a serious way, without this feature of optimism/hope Dworkin's proposal would not be the same. Dworkin might even agree that the enterprise would be impossible because we would then have accepted the skeptic's attitude toward our practice. As an attitude, integrity flies in the face of skepticism. It expresses the optimism which makes possible the best law. But law itself, as Dworkin interprets it, is also inherently optimistic.

Law's optimism is in that way conceptual; claims of law are endemically constructive, just in virtue of the kind of claims they are. This optimism may be misplaced: legal practice may in the end yield to nothing but a deeply skeptical interpretation. But that is not inevitable just because a community's history is one of great change and conflict. An imaginative interpretation can be constructed on morally complicated, even ambiguous terrain.⁵⁸

To see law as optimistic is to understand law as the best that it can be. Optimism motivates us to approach our problems constructively--to imagine what our society could be like and create the conceptual and structural environment in which we are encouraged to act. Through law as integrity, optimism places on each of the members of a

society, of a 'community of principle', a responsibility to imagine a better society. It tells us what we should do and not merely what we could do--both in a detailed way and in a general way which is still grounded in our society. In incorporating optimism/hope into his proposal, Dworkin has created a context in which the 'hope' that people demonstrate time and again, sometimes without any apparent reason, makes sense.

Imposing purpose: interpreting in the 'best light'

Constructive interpretation is critical to Dworkin's theory not only because it tells us what 'reality' is, for the purposes of interpretation, but because in the act of interpretation we acknowledge the "interaction between purpose and object."⁵⁹

Roughly, constructive interpretation is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong.⁶⁰

When we interpret in order to make something the "best possible example" it can be, we bring to the interpretation our convictions about where the interpretation should take us in the future. We impose purpose through interpretation. Once we show, for instance, our legal practice in "its best light", we effectively use the interpretation to guide our future since it

...offers the most illuminating account of what lawyers and judges do...this is therefore the best guide to what they should do...it points out the right direction for continuing and developing that practice.⁶¹

We do more than examine an interpretation on the grounds of how well it justifies our practice. In every interpretation we attempt to make our practice the best it can be, all things considered. To justify our practice is to honour it.⁶² We need always ask if the practice is made "more attractive"⁶³ if one interpretation is adopted rather than another. We choose that interpretation which shows our practice as the best example of what our practice can be in light of the ideals we interpret it to express.

The force of motivation for showing something in its best light comes from what Dworkin has understood to be the inability of skeptics to demonstrate that we have no reason to show our practice in its best light. What skeptics do is show our practice in its worst light--relative to the standards that Dworkin has created in Law's Empire.

Critical legal studies should be rescued from these mistakes because its general skeptical ambitions, understood in the mode of internal skepticism, are important. We have much to learn from the critical exercise it proposes, from its failures as well as its successes. This assumes, however, that its aims are those of law as integrity, that it works to discover whether, and how far, judges have avenues open for improving law while respecting the virtues of fraternity integrity serves. These are indeed the aims of at least some members of the movement. But others may have a different and converse goal. They may want to show law in its worst rather than its best light, to show avenues closed that are in fact

open, to move toward a new mystification in service of undisclosed political goals.⁶⁴

To see something in its worst light is to close our options for moving forward from it in an evolutionary way. If we cannot move on from our present using what Dworkin calls 'organic' methods of change, we are left with making an abrupt change in the direction of something which as yet has no meaning for us. We may want to make our society better, "[to] bring it closer to what really is a fair and just and happy society"⁶⁵, but we have neither the means to justify our direction nor the ability to understand what our society means by 'a fair and just and happy society'. By interpreting our practice in its best light we find our purpose in the best example of the genre and in turn impose that moral direction on our future.

We turn our backs both on other examples of practice than our own and also on those aspects of our own practice which we cannot include in the overall interpretation because they do not fit. We decide they are not important enough to make an interpretation which does not include them invalid. About some judicial decisions we are allowed to agree that they are mistakes which need not be carried into the future. As Hercules answers the skeptic with regard to past legal decisions his interpretation does not fit:

...the number of decisions I must count as mistakes is neither so great nor of such fundamental importance, viewed from the

perspective of legal practice as a whole, that disregarding them leaves me no solid foundation for the more general interpretation I have just described.⁶⁶

Still other mistakes will require that we carry them from interpretation to interpretation until some paradigm shift allows us to disencumber ourselves. We will continue to allow them to have an effect on our practice. Just as justice carries the responsibility on its shoulders of ensuring that inclusive moves towards pure integrity, justice rules over constructive interpretation of social practices through interpretation:

Since interpretation is in part a matter of justice, this stage may show that apparently unjust responsibilities are not really part of the practice after all, because they are condemned by principles needed to justify other responsibilities the practice imposes. But we cannot count on this: the best interpretation available may show that its unjust features are compatible with the rest of its structure. Then...the question arises whether the injustice is so severe and deep that these obligations are canceled. That is one possibility, and the practices of racial unity and discrimination seem likely examples. But sometimes the injustice will not be that great; dilemmas are then posed because the unjust obligations the practice creates are not entirely erased.⁶⁷

These are examples of how imposing best light on interpretation of our past might handle what the prevailing methodology identifies as 'mistakes'. We can either justify ignoring them or gradually work our way through them and absorb them into the overall story. But there is no avenue left for us to pursue the mistakes themselves except in the

shadow of the best example of our practice.

Dworkin notes that perhaps it is a mistake to view controversial theorists such as Marx and Nietzsche as theorists of justice.⁶⁸

Some theories of justice do contest much of what their contemporaries take as paradigmatic...and this explains not only why these theories--Nietzsche's for example, or Marx's apparently contradictory thoughts about justice--have seemed not only radical but perhaps not really theories of justice at all. For the most part, however, philosophers of justice respect and use the paradigms of their time. Their main work consists neither in trying to state the concept of justice nor in redefining paradigms but in developing and defending what are plainly full-blooded conceptions of justice, controversial theories that go well beyond paradigms into politics...There is nothing neutral about these conceptions. They are interpretive but they are committed, and their value to us springs from that commitment.⁶⁹

If we are not committed to the paradigms that every one else in our time and social 'place' accepts are paradigms then we are not considered to be committed to our practice--we work outside of the bounds of integrity and outside of the prevailing interpretation. Our work is a 'mistake' relative to the interpretation of the practice as a whole. We can only be rescued by a paradigm shift that will bring us into the fold. Our degree of commitment is measured by how someone else who accepts the prevailing paradigms constructively interprets our acceptance of the prevailing paradigms. It is our commitment to the practice, a moral criterion, that determines the part we can play in our

society. And if we later recognize the value of someone's work from the past, if the paradigm shifts to include this new-old conception, can we say that now he was committed after all?

We might also bear in mind that many of what we now call advances in science have been accidents. An accident has no past. Its perpetrator may have been committed to the prevailing paradigm while the experiment was taking place but this becomes irrelevant in light of the discovery which denies the paradigm. As well, 'mistakes' according to the prevailing theory turn out in consequence to be paradigm makers in themselves but often not until many years have passed. These 'mistakes' occur on both higher and lower levels of science. The Catholic Church showed a very strong commitment to the prevailing paradigm when it was confronted with Galileo. And now we generally accept that it was not Galileo who 'was' the mistake. How do we now describe the moral commitments? Just who saw what in its best light? And what was the mistake—the moral commitment or the claim to knowledge?

Summary

Law's Empire creates a conceptual framework in which we, as the interpreters, have a pivotal role to play through thought, attitude, argument and action in generating change

within our society. Through the choices we make we are ourselves the catalysts for merging theory and practice. It is our active and conscious attitude toward law which makes a better legal practice and a better society possible. But first we need to be willing to interpret our society in its best light.

By arguing that only one methodology will make this possible, Dworkin has made constructive interpretation the dictator of Law's Empire. He has been driven to make this claim by his understanding that no other way of thinking will yield the necessary means of justification nor provide the necessary link with 'reality'. This is to a great extent a result of his (mis)understanding of utopian thinking.

The structural features on which Law's Empire depends--integrity, law's optimism, and imposing purpose through interpretation--and their derivative features--productive disagreement and the ideal dimension of law--all address the same problem--how we make what we have now better. Dworkin's solution is to focus on our reality not in its entirety but only in its best light. We focus on that part which gives us reason to make what we interpret to be our practice better. In order to persuade us to do this, Dworkin argues that this is the only road we have to a better future. He creates an opposition between worst and

best light that can only be resolved by persisting in interpreting in the best light. There is no middle ground between the two. Either we accept through argument that the worst light is the only light, or we persist in filtering our practice through the best light. On Dworkin's terms the argument between best and worst light must take place on the grounds of constructive interpretation which is not neutral but itself creates a bias toward seeing things in their best light. What Dworkin identifies as law's inherent optimism serves to reinforce this bias.

Dworkin recognizes a role for ideal examples to play and uses them liberally. But we are constrained from examining the models critically except from within the context created by constructive interpretation. In Law's Empire paradigms, ideal examples, and models are not neutral--they too are expressions of our political morality; they too interpret our own society in its best light. They are 'analytical devices' within the overall methodology and on Dworkin's terms must be so in order to have meaning for us. Law's Empire would still make sense without most of the ideal models Dworkin uses as examples, but the models themselves make no sense without the context created by Law's Empire.

In his effort to be realistic, Dworkin has argued that only interpreting our practice in its best light will

permit evolutionary change. We must first establish what 'organism' it is within which organic change makes sense. The organism which Dworkin postulates makes a statement about our social environment and the role we play in it. He answers the question, 'how would society be better for all of us?' by limiting to whom 'us' refers and by creating a network of concepts which demands that we alter our consciousness. He not only demonstrates his own optimism by postulating a better society but integrates optimism/hope into his proposal by making it a structural feature. What he does not do is allow us to be critical of our society and constructively use this criticism to create a vision of a better society.

Because he has concentrated his efforts on being 'realistic', Dworkin has instead offered an interpretation of our present practice that makes it the best example it can be in light of our past. Despite the (minimal) role played by pure integrity within Law's Empire, Dworkin has not recognized the value of utopian thinking as a method of criticizing our present society. Pure integrity itself is still too closely connected with how we interpret our practice to allow us to explore different meanings for even those political virtues which Dworkin identifies, not to mention others we may want to include which he has not identified.

We have viewed Law's Empire from the perspective of

utopian thinking--as an example of utopian thinking. In consciously creating a new network of meaning, Dworkin has underscored the contextual nature of meaning. He has emphasized that ideal examples, no matter how hard we might try to make them esoteric, are still examples relative to something else--there is some kind of scale, some line, on which they are ideal relative to cases which are not as explicit or extensive. We refer ideal examples to something else with which we are familiar, to which we have assigned some meaning and value. In Dworkin's case, ideal examples are referred to constructive interpretation and to law as integrity. What we want to be able to address when we critically assess an ideal example is this set of meanings which gives it sense--to see the line on which it is the pinnacle example. If we are obliged from the outset to make not only the example itself but the line which gives it meaning the best that they can be--to see them in their best light--we will be less likely to consider alternatives until agreement about a particular model or paradigm has completely broken down. We may even be greatly surprised when this breakdown occurs. This approach reinforces the crisis management mentality which is evident in much of our social practice now.

It is in just this dimension of context that utopias themselves are always related to some aspect of our present network of meaning whether that connection is emphasized or

not. In analyzing a utopia as an ideal example, one of the challenges is to decipher that set of criteria which gives it meaning and to examine that proposed network of meanings relative to the one we otherwise hold. It is not just the ideal example itself but this broader set of criteria in general which expands our imagination, as Dworkin has shown with constructive interpretation. When we consciously focus on making a utopia realistic we are forced to place constraints on our imagination and, as Dworkin has also demonstrated, construct the scope and substance of our dreams in a familiar direction.

In denying that his proposal is utopian, Dworkin has directed our attention away from the ideal dimension of the law he proposes and from assessing the kind of citizen he argues we should all be relative to the kind of citizen we might otherwise argue we now are. Dworkin's interpretation of the kind of people we are is ideal to the same extent to which his theory of law is ideal. He argues that law as integrity expresses the way we and our law should be and could be and not the way we are.

Chapter Four

A Plateau on An Intermediate Level

Dworkin's own proposal suffers because he reacts against an extreme interpretation of utopian thinking. In this chapter I will consider three areas in which a different understanding of utopian thinking might help.

His aversion to utopian thinking leads him to create a structure that ensures that both abstract and concrete issues are approached from the perspective of an existing practice. But he goes further than necessary and stipulates that we must always try to approach whatever issues we interpret with an eye to seeing our own practice in its best light.

Dworkin seeks to dissolve what he understands as traditional dichotomies, utopias as opposed to real practice among them, into a unified approach that allows us to interpret both a specific practice and abstract issues using the same mode of reasoning. He creates what might be seen as an 'intermediate' level by making Law as Integrity available to any society which shares its principles and attitude towards law while indicating at the same time that it is designed for use only within a specific practice. Has Dworkin proposed a merger or has he allowed one 'side' of

the old dichotomies to triumph at the expense of the other?

It is Dworkin's concept of participation that permits the connection between concrete and local issues on the one hand and abstract and global issues on the other. Dworkin's use of 'internal participation' as a way to decide whose agreement and convictions about political morality matter is a limiting concept. He has tried to ensure that issues are 'brought down to reality'. But his concept of 'internal participation' is integrally connected with constructive interpretation and with the obligation to see our practice in its best light. This makes it difficult to describe what happens when we attempt to remove ourselves from the context of our own practice to get a better perspective, as when we benefit from thinking about a utopian proposal. The benefits accrue to our existing practice when we are inspired to apply what we have learned. The question is not how well we can remove ourselves from our existing practice but how to describe what happens when we intentionally try to minimize its impact on our thinking.

Limitations imposed by constructive interpretation on the roles played by concepts and conceptions

Dworkin acknowledges that law is different from justice. Unlike justice, law relates to a specific practice, referring to past political decisions that justify the coercive powers of a specific state.¹ Moreover, law and

justice are different because "interpretations of law...often appeal to justice [a political ideal] as part of the point they deploy at the interpretive stage."² But justice too is "an interpretive concept"³; it too fits the model for constructive interpretation.

...justice is an institution we interpret. Like courtesy, it has a history; we each join that history when we learn to take the interpretive attitude towards the demands, justifications, and excuses we find other people making in the name of justice. Very few of us self-consciously interpret this history the way I imagined the people in my story interpreting courtesy. But we each--some more reflectively than others--form a sense of justice that is an interpretation nonetheless, and some of us even revise our interpretation from time to time. Perhaps the institution of justice started as I imagined courtesy starting: in simple and straightforward rules about crime and punishment and debt. But the interpretive attitude flourished by the time the earliest political philosophy was written, and it has flourished since. The progressive reinterpretations and transformations have been much more complex than those I described for courtesy, but each has built on the rearrangement of practice and attitude achieved by the last.⁴

When we "constructively interpret" an abstract concept such as justice we interpret it for our own society and not in a universal sense.⁵ Dworkin is not proposing a general theory of justice, just as he rejects a general theory of law in the traditional sense; i.e. "General theories of law, for us, are general interpretations of our own judicial practice."⁶ It is our conceptions of justice that are our theories of justice.⁷

The history of an abstract concept of justice,

although it is also an interpretive history, is different from the history of law in a society. The interpretive history of law is a history of specific practices. Our working paradigm of justice, rooted in our practice, is connected with our law through the ideals that we apply and not so easy to identify as is our practice of law. From the point of view of constructive interpretation, the history of an abstract concept is more 'conceptual' than is the history of law. The history of the concept of justice, as an abstract political ideal, is controversial. It is much more difficult to agree on a statement of the abstract concept than it is to agree on what our legal practice has been and is. It is the task of political philosophers to:

...try to capture the plateau from which arguments about justice largely proceed, and try to describe this in some abstract proposition taken to define the "concept" of justice for their community, so that arguments over justice can be understood as arguments about the best conception of that concept.⁸

As members of a society we have a rough idea about what justice means for our society. And it is this rough idea only that becomes the plateau when we discuss our theories about justice. We may disagree in the way we refine the concept. On Dworkin's view this is a positive feature of interpretive societies. With respect to abstract concepts, this distinction between concept and competing conceptions serves much the same function as Dworkin's distinction between theoretical and empirical disagreements⁹, as this

distinction applies to law. Rough agreement about the plateau allows us to disagree about which is the best interpretation of justice without always challenging whether participants really are talking about the same thing.

In linking 'plateau' with what is paradigmatic, 'plateau' becomes a limiting concept. Similar boundaries for discussion are created when 'law' is limited to only one social practice--when one practice becomes the paradigm case. The limitations provided by the paradigm/plateau may be rough but still provide a context within which we can judge the best of competing conceptions and interpretations. In order that we have a reference point around which to focus our decisions about which competing interpretation/conception is best, constructive interpretation requires the limitations that mark the boundaries of discussion in both the case of law and the case of justice. But the consequences are quite different. We may agree that limiting our debate about law to one practice/tradition can be useful. Interpreting our law in light of our practice allows us to judge whether one interpretation 'fits' better than others with both our practice and our political ideals. This does not also mean that we need agree that the discussion/disagreement about abstract concepts should be limited to the same prevailing paradigm/plateau. On Dworkin's view the 'practice'/history of the concept of justice in a specific society is the

history of the theories of justice, of conceptions about the abstract concept. What Dworkin is leaving on the outside of the boundaries of our discussions about justice are all those conceptions/theories about justice which do not express the political ideals that can be interpreted as part of our own tradition. If we cannot interpret a theory of justice as speaking from our own tradition, then it has no application for us.

Dworkin argues that our debate is not and should not be about the concept itself--that when we disagree it is only about conceptions of justice. We link the concept of justice to the convictions we already have, convictions that stem at least in part from our 'own' practice and reflect our views on political morality.¹⁰ Even talking amongst ourselves, all of us as participants in the same political/moral tradition, Dworkin does not expect that we will agree on what is the best conception of justice. "Our controversies about justice are too rich, and too many different kinds of theories are now in the field."¹¹ It is even more difficult to get agreement about a more explicit interpretation of the concept itself.

When Dworkin offers a description of a plateau/concept for justice he emphasizes that it is not important whether this is 'really' a good description of the concept or not.¹² The same applies to an abstract description of the point of law.

Just as we understand the practice of courtesy better at one stage in its career by finding general agreement about the abstract proposition that courtesy is a matter of respect, we might understand law better if we could find a similar abstract description of the point of law most legal theorists accept so that their arguments take place on the plateau it furnishes.

Neither jurisprudence nor my own arguments later in this book depend on finding an abstract description of that sort. Political philosophy thrives, as I said, in spite of our difficulties in finding any adequate statement of the concept of justice.¹³

It may simply be too difficult to get agreement on a statement of the abstract concept. In the courtesy model, the statement of the abstract point of courtesy stands as an example of how a model would guide the use of such a statement by structuring subsequent interpretations. Dworkin substitutes 'agreement about the rough boundaries of a concept' for 'agreement on a statement of the abstract concept'. In the absence of agreement on a statement of the abstract concept, it is the 'plateau', as the paradigm of agreement about the rough boundaries, which functions as the 'practice' serves with respect to law when law is interpreted on a more local level. Agreement becomes a venue for a requirement of 'fit' with the rough 'plateau', on which plateau conceptions about the concept can be judged. What we are able to agree on reflects the extent and degree of our understanding at the time and is also a reflection of the stage of interpretation of a given concept in our society. Agreement and disagreement, consensus and

controversy, are indicators of the stage of the interpretive attitude.¹⁴ It is a characteristic feature of the interpretive stage that an interpreter will "settle on some general justification for the main elements of the practice identified at the preinterpretive stage."⁶⁶ It is in the post-interpretive stage that an interpreter adjusts his sense of what the practice "really" requires so as to better serve the justification he accepts at the interpretive stage.¹⁶ But, as Dworkin describes it, evolutionary change will continue and the post-interpretive stage will change again into a pre-interpretive stage. Agreement is a gauge of the stages of interpretation.

...a very great degree of consensus is needed--perhaps an interpretive community is usefully defined as requiring consensus at this stage--if the interpretive attitude is to be fruitful...¹⁷

Using 'agreement as consensus' to identify the different stages of interpretation differs in an important way from using 'agreement as the common ground of discussion' in order to ensure that the minimum level of shared meaning and value required for productive discussion/disagreement is present. When we require that interpretations about specific issues fit with our practice we are using 'practice' as the test of whether an interpretation interprets what it purports to interpret or actually puts forth something new. The interpretation speaks to the level of agreement as consensus in the community through the

dimension of 'fit'. But on the level of abstract issues, we no longer use 'agreement' in the same way. Given Dworkin's reservations about seeking agreement about a statement of the abstract concept, on this level 'agreement' serves more to identify who and what views are part of the discussion and whose views are left on the outside.

It is our political philosophers who decide what conceptions of justice fit with the prevailing paradigm of justice. They may decide that people who may have thought they were arguing about justice actually were not because they never did grasp the 'plateau' from which others proceeded--they did not have the same grasp of the concept as others. This is different from saying that the arguments of these people were 'wrong'. Rather it places them completely outside the arena of discussion.

In any case we have something that is more important than a useful statement of the concept. We share a preinterpretive sense of the rough boundaries of the practice on which our imagination must be trained. We use this to distinguish conceptions of justice we reject, even deplore, from positions we would not count as conceptions of justice at all even if they were presented under that title.¹⁸

When the notion of a 'plateau' in Dworkin's sense is applied to abstract concepts, the degree of agreement it purports to indicate becomes a critical element in limiting the scope of discussion. Limiting the scope is one of the necessary conditions which make it possible to judge among competing conceptions of a concept. On Dworkin's view, Marx

and Nietzsche broke with the prevailing paradigm, (the rough plateau of agreement about the concept of justice), to such an extent that their views cannot even be called 'controversial' conceptions of justice.¹⁹ The rules of constructive interpretation have eliminated them at the starting gate.

The interpretations of those who live with us within the same political boundaries but who disagree about the interpretation of abstract concepts, and are therefore not members of our practice, can also be ignored. As Dworkin has demonstrated in the case of the critical legal studies movement²⁰, seeing it in its 'best light' means that those who share in the prevailing paradigm apply a standard with which the CLS movement itself need not agree. The standard itself is removed from the parameters of discussion. On Dworkin's terms we do not discuss the interpretation of the abstract concept but only of competing conceptions.

An Intermediate Level Between 'Local' and 'Global'?

Dworkin connects abstract concepts with the interpretation of a specific practice or political tradition through the use of the barometer of agreement/disagreement. Agreement about 'ordinary' law is guided by both a specific practice and consensus about political ideals which have an abstract dimension. Rough agreement about abstract concepts is required from within the practice but just what it is

that is the substance of agreement has a looser interpretation because its history is more conceptual. What has specific local application draws on abstract concepts and what is an abstract concept is interpreted from the point of view of a particular practice or tradition. Dworkin has proposed a way of merging what is abstract with what is concrete in conjunction with a way of merging what is global with what is local.

Dworkin refers broadly to Anglo-American society as that tradition to which his interpretation of law applies.²¹ The case study examples which he uses are either from British or American law.²² His discussion on constitutional law uses as its focus the U.S. constitution. He has neither restricted the parameters of discussion/disagreement to the law/practice of one state nor aimed it at all laws and all states. Whichever society accepts Dworkin's claim that Law as Integrity is the best interpretation of its law becomes eligible to participate in the common territory of Law's Empire.

It may be argued that in order to understand our own laws, within our community, there is no need to establish a system of reasoning that allows cross-community views to be exchanged productively--that the law we are trying to interpret is an internal matter. If we are trying to establish what our own law was, is, and should be, then we need to look no further than our own practice. But Dworkin

has not taken this route. His proposal is not directed at any one local practice even though it is available to any society that shares the 'protestant' attitude Law as Integrity has towards law yet in its application LAI is limited to the boundaries of a specific practice. He makes it appear as if another dichotomy, the one between 'local' and 'global', has also been dissolved by constructive interpretation.

Had he confined his discussion either to the United Kingdom or to the United States, the dimension of 'fit' on which we are to judge 'Law as Integrity' would have made more sense. As it stands, however, we are expected to lay aside any concerns about the differences between a monarchy and a republic or between a society that has a written constitution and one that does not. If 'Law as Integrity' is to be judged the best interpretation of both these practices, then it is on the second dimension of 'justify/honour' that it has the strongest claim--the dimension on which our convictions about political morality have the most influence. It is because of Dworkin's interpretation, which maintains that these two states both share the same political ideals, that they are connected.

Law's Empire roughly addresses a shared political tradition of Anglo-American societies. On the dimension of fit with a paradigm of agreement, it satisfies, in a way, a requirement of 'fit'. What 'fits' is on the level of

political morality rather than on the level of a specific practice/tradition. It is because Dworkin has expanded his interpretation of law to encompass political morality, in contrast to 'semantic theories' of law²³ that he is at all able to compare the laws of different states, no matter how much else they have in common and no matter what other differences they have. Constructive interpretation provides a sliding scale of requirements on the dual dimensions of 'fit' and 'justify/honour' on which ultimately how well something fits is determined on the dimension of justification by agreement about the abstract issues of political morality.

On local issues an interpretation is required to conform to both dimensions of 'fit with practice' and 'justify/honour' but in discussions about abstract issues interpretations are required to conform only with "an interpreter's most abstract and elemental conviction"²⁴. In his attempt to merge traditional dichotomies Dworkin appears to be operating with his own proposal somewhere in the middle of local and global concerns. In moving from local to global issues, at what stage and for what reasons do or should the requirements imposed by constructive interpretation change? What are the requirements of constructive interpretation when an 'intermediate' level is at issue? Dworkin's interpretation of the way we approach 'abstract' issues is that although they may have a 'latent

global reach' we interpret them from the point of view of our own practice. His interpretation of what is 'abstract' leaves no room for discussing abstract issues except from the perspective of our own political/moral tradition and steers away from anything that might be interpreted as having 'universal' implications. It is in this sense that what he proposes is on an 'intermediate' level.

The interpretation of an abstract concept, such as justice, proceeds in much the same way as the interpretation of something with more specific boundaries, such as the law of one society. However since justice is more abstract than law, the way that we judge among competing conceptions of justice is different from the way we judge among competing interpretations of our law. The way we assess law follows the model of the imaginary example of 'courtesy'; competing interpretations are referred to a specific practice to be judged on how well each 'fits' and 'justifies/honours' our law as it has been and is practiced in our society. 'Law' and 'courtesy' share the same rules. Justice is different. In the case of such an abstract concept, Dworkin is prepared to relax the 'rules'.

Dworkin states that he is prepared to forego the first requirement of 'fit' and use only the second dimension of justify/honour, in which convictions about political morality come into full play.²⁵ The convictions we have about justice, as a political ideal, are convictions about

political morality. On Dworkin's view, when we debate about different conceptions or theories of justice, this debate takes place on the grounds of political morality. Questions about political ideals are questions about political morality. Moral questions can only be argued on moral grounds--"[a] moral view can be damaged only by moral argument."²⁶

Just as we use our own convictions about our own practice to judge the specific law of other societies, as when we comment on Nazi law, on an abstract/global level, the 'latent global reach' of justice enables us to comment on the conceptions of justice advanced by political philosophers from traditions other than our own.

Justice and other higher-order moral concepts are interpretive concepts, but they are much more complex and interesting than courtesy, and also less useful as an analogy to law. The most important difference between justice and courtesy, in this context, lies in the latent global reach of the former. People in my imaginary community use "courtesy" to report their interpretations of a practice they understand as local to them. They know that the best interpretation of their own practice would not necessarily be the best of the comparable practice of any other community. But if we take justice to be an interpretive concept, we must treat different people's conceptions of justice, while inevitably developed as interpretations of practices in which they themselves participate, as claiming a more global or transcendental authority so that they can serve as the basis for criticizing other people's practices of justice even, or especially, when these are radically different. The leeways of interpretation are accordingly much more relaxed: a theory of justice is not required to provide a good fit with the political or social practices of any particular community, but only with the most

abstract and elemental convictions of each interpreter.[italics added]²⁷

Within our own practice, our rough agreement about the terrain of the concept of justice provides us with the common ground necessary for discussion. It is not 'fit' with practice, but our "most abstract and elemental convictions" which we use to decide among conceptions of justice. But as Dworkin has also stated, we approach questions about abstract concepts not in a universal way but from the perspective of our own practice.²⁸ Within the parameters of constructive interpretation it is not simply 'our convictions' but our convictions in conjunction with the obligation always to interpret our own practice in its 'best light' that makes Dworkin's concept of convictions more specific and limiting than would be the case if we were simply talking about interpretations and convictions in a general way.

In the above quote Dworkin has introduced the idea that we can take the convictions about political morality that are rooted in our own practice and use these to criticize other practices which may not fit with the rough boundaries of the concept that we agree on amongst ourselves. They are outside of the prevailing paradigm for our practice. Through constructive interpretation applied to our own practice we are able to extend our convictions to make judgements about other types of practice. The "global

or transcendental authority" is on the grounds of political morality.

We can try to take the participant's internal point of view when we interpret a society other than our own so long as we (1) continue to apply constructive interpretation as we apply it to our own practice, (meaning that we continue to see our own society in its best light) and (2) apply constructive interpretation only to societies that can accommodate, at least to a degree, our own purposes and convictions.

When it is appropriate to take the interpretive attitude I describe in the text toward some different culture (see the discussion of foreign and wicked legal systems in Chapter 3, for example) we try to understand it not conversationally but making of it the best, given our purposes and convictions, it can be. If we think that goal requires us to discover or adopt the actual convictions, which might not be ours, of historical actors, the problem of isolation remains...But these problems, when they are serious, become reasons for tailoring the demands of constructive interpretation to what we can achieve, to finding some dimension of value in theater that allows us to make the best we can of *The Merchant of Venice* (or the Germanic antecedents of the common law) without doubtful speculation about states of mind closed off to us by cultural barriers.²⁹

It is as participants in our own cultures that we decide whether we should try to make the best of other cultures. We bring with us not only our convictions/values but also the method we use to understand them. Even while we try to make "context sensitive choices"³⁰ constructive interpretation never asks us to leave behind the 'protestant

attitude' of democracy.³¹ This is most evident in the case of attempting to interpret Nazi law but applies to all situations.

We might decide that the interpretive attitude is wholly inappropriate there, that the practice, in the shape it has reached, can never provide any justification at all, even a weak one, for state coercion. Then we will think that in every case [Judge] Siegfried should simply ignore legislation and precedent altogether, if he can get away with it, or otherwise do the best he can to limit injustice through whatever means are available to him.³²

Can we choose to have an interpretation of an abstract concept that is anything but a reflection of our own political morality and still see our own practice in its 'best light? From the perspective of Law's Empire, so long as the issue remains on the ground of convictions about morality and so long as we are willing to continue the 'story' of our own practice this choice is not available to us. This applies in the case of local and global issues and in the case of concrete and abstract concepts.

The 'best light' feature of constructive interpretation becomes a burden when we try to communicate with societies other than our own. Although Dworkin has attempted to create a link between local and global issues, this link is continually threatened when we address practices other than our own by our obligation to see our own practice in its best light. When the arguments of critics outside of our own practice do not 'justify/honour'

what is our practice, we are completely free to ignore them. They are either not willing or not able to make of our practice the 'best example' it can be, for us and in the context of our practice. Similarly, on the level of abstract concepts, we ourselves have no reason to resort to 'heroic measures' in order to try either to include Marx and Nietzsche in our discussions about justice or to see critical legal studies from its own perspective rather than the one we already have.

In light of these concerns, Dworkin's statement that abstract issues with a 'latent global reach' need only refer to "the most abstract and elemental convictions of each interpreter" is an insufficient description of what discussion and disagreement about abstract issues might be like. Surely we bring our own convictions about political morality with us into discussions about issues with a 'latent global reach', both amongst ourselves and in trans-societal situations. But when we decide among competing conceptions we are already in rough agreement. We are not encouraged to stand back and take a different view which is critical not just of what is competitive within the system, but the system itself.

In an effort to avoid the extreme of no common ground for discussion, Dworkin has carried the requirement of common ground itself to an extreme by conflating 'common ground' with 'consensus'. In one extreme there is

insufficient consensus about the issue to have discussion at all. In the other extreme, consensus itself becomes the common ground through the rough paradigm of agreement about political morality. Similarly, in an effort to enable us to discuss the abstract/ideal dimension of the specifics of our local practice, Dworkin has suggested that there is no other way to interpret the more abstract issues except as they have been part of our experience in a specific practice. If abstract issues become included in the domain of constructive interpretation from the point of view of a specific practice, then there is an even greater need for a separate arena to describe debate about abstract issues in cases where we attempt to lay our own convictions about our own practice aside. Because of the restrictions imposed by Dworkin's concept of constructive interpretation we are always tied to the past/story of our own practice. This is quite different from recognizing that we cannot debate about morality except by relying on our own convictions. In debate that is not confined by constructive interpretation our convictions may change as a result of debate and self-criticism. This possibility is a potential threat to our practice, seen in its best light, and is therefore discouraged by constructive interpretation.

Dworkin dissolves the dichotomy between local and global issues in favour of local issues. This is at the expense of structuring all argument on the assumption that

we can never discuss anything except from the position of convictions about our own tradition of political morality. Dworkin has reinforced rather than eliminated the need for more than one arena for debate. This is not to argue that a separate arena is therefore necessary, only that Dworkin has not shown us how this can be avoided or why it should be.

The Impact of Dworkin's Interpretation of 'Participation'

As the stages of interpretation evolve, from pre-interpretive, to interpretive, to post-interpretive, it is value and content which disappear and reappear, mingle and separate.³³ People who attempt to understand our society 'from the outside' cannot share in either the meaning or the value that we as 'internal' participants interpret different issues, ideas, or institutions to exhibit. And this explains in part Dworkin's stance that when the situation is reversed, when we are the ones trying to understand another, different, society, then we are in the position of outsiders, limited in our ability to interpret others.

Whenever we do put ourselves in the position of interpreting societies other than our own present society, societies distanced from us by space, time, or practice, what connects us to them is the dimension of value. When we discuss the life of societies one of the questions of value is that of political morality. In order for us to understand

another, we try to imagine ourselves as participants in the practice of the other society. But so long as we engage in constructive interpretation, we are limited by our own convictions, by our inability to adopt convictions that do not put our own practice in its best light, and by whether the society we attempt to interpret is itself an interpretive society. When we try to understand the values of others we can only do so if in a very broad sense these other values conform with our own. Those societies with which we can have meaningful discourse are limited to those with which we have values in common. Dworkin has proposed that we distinguish those who are in disagreement about an abstract concept from those who disagree about competing conceptions of a concept. For the purposes of constructive interpretation, it is agreement about the abstract concept which determines with whom we can have productive debate and which also determines who is a 'participant'.

Dworkin is reacting against those 'traditional' approaches which claim to be able to generate understanding or knowledge of a society without having engaged in an 'internal participant's' point of view. If we apply a methodology which is structured to find static meaning and strict rules, this is what we will find and no more. What Dworkin calls 'semantic' theories of law fall into this class.³⁴ Dworkin argues that an interpretive society cannot be understood on these terms.³⁵ He has structured his own

argument from the 'internal' point of view, because this is what law in our practice/tradition requires.

Both perspectives of law, the external and the internal, are essential, and each must embrace or take account of the other. The participant's point of view envelops the historian's when some claim of law depends on a matter of historical fact...The historian's perspective includes the participant's more pervasively, because the historian cannot understand law as an argumentative social practice, even enough to reject it as deceptive, until he has a participant's understanding, until he has his own sense of what counts as a good or bad argument within that practice.³⁶

The external point of view does not have a moral dimension. When the historian's perspective is that of a participant then the point of view is no longer external but internal. On Dworkin's view whatever issue has a moral dimension must be approached from an internal point of view. Law's Empire is both written from the participant's point of view (Dworkin's) and approaches the problems on behalf of the internal point of view.

This book takes up the internal participant's point of view; it tries to grasp the argumentative character of our legal practice by joining that practice and struggling with the issue of soundness and truth participants face.³⁷

Despite Dworkin's acknowledgement that the internal and external points of view each have a role to play, on his view, in order to understand a society, we must take an internal point of view. It is the internal participant's point of view that makes real discussion and disagreement possible among the members of a society.

If all social/moral issues are to be addressed on the ground of political morality, an internal participant's point of view becomes a critical element, both in discussions about our own society and in discussions about different societies. What Dworkin asks of us, as readers and critics, parallels the demands that his proposed conception of law asks of its participants. We are either insiders or outsiders with respect to the new paradigm for law. If we accept the limitations imposed on interpretation by shared practice, then we accept our inability to have productive disagreement/discussion with others who do not share our interpretation of the abstract concepts--whether these others are 'geographically' members of our society or more removed from our society and tradition as are other societies. All discussions with any but other members of our present practice who also share our interpretation of our society become as if we are always talking to the 'past'--to participants who cannot answer back. We are the ones who structure the discussions; we judge what 'fits' and reinterpret the past in light of our present and our future. Our focus is always determined by our present practice. It is the political morality we interpret our (present) community, as a moral agent itself, to hold that justifies our law.

Law as integrity, then, begins in the present and pursues the past only so far as and in the way its contemporary focus dictates. It does not aim to

recapture, even for present law, the ideals or practical purposes of the politicians who first created it. It aims rather to justify what they did (sometimes including...in an overall story worth telling now, a story with a complex claim: that present practice can be organized by and justified in principles sufficiently attractive to provide an honorable future. [Italics added]³⁸

Dworkin has assumed that the internal participant mode must govern interpretation. Although it is engaged more actively when we address local/concrete issues, the perspective of the internal participant carries over into the discussions about abstract/global issues. Can there be any ground at all that we can address without at the same time trying to show our own practice in its best light? Must we approach everything as 'participants'?

An example where participation is not expected of us in order for the model to be useful is the imaginary example of courtesy that Dworkin offers. Here the question is whether we can participate at all in an imaginary example. We cannot take what he describes off of the page and participate in its evolution. Here again Dworkin uses the model to structure his argument and expects that we will be able to use the model to do the same for our arguments even though we have not shared in the experience of interpreting the evolution of this imaginary model of 'courtesy' in our own practice. We are expected to understand his model as a structural model. We participate in a conceptual way. In the case of imaginary examples we do not even need to share

the values that Dworkin attaches to courtesy in order for the model to be useful. We, as readers and critics, are different from the members of Dworkin's imaginary community--without their (imagined) 'full participation' the description of how interpretation evolves would be incomplete.

Just as we are not internal participants in the full sense in the practices of an imaginary society, our participation is also limited in societies separated from us by time, distance, and tradition. When we attempt to interpret the practices of other societies, past or present, then the 'story' of our own practice is no longer the tie that binds. In such cases the imaginary example of 'courtesy' describes the role of participation. But Dworkin insists that we become 'internal participants', as long as the conditions for constructive interpretation are met. Even if we are 'successful' in imagining ourselves as participants in another practice, our success is still measured by how well we have managed to continue to see our own society in its best light. We have not been encouraged to find anything different from the model of political morality we interpret our own society to be. Is Dworkin right to insist that we debate even abstract/global issues with an eye to seeing our own practice in its best light?

What if, instead, we were to approach abstract/global issues without this obligation? People who

do not share the interpretation of a prevailing paradigm could debate about models in the same way that Dworkin expects us to benefit from his use of the imaginary example of 'courtesy', as imaginary participants. In this case we would debate on the more general ground of morality, seen as a description of what is at issue, rather than through our own convictions, in Dworkin's sense, about morality. We would discuss our convictions instead of using them uncritically to bolster our prevailing paradigm. We would still be talking about moral issues but would not allow our own existing convictions, as they connect us with the obligation to see our own practice in its 'best light', to dominate. This would allow us more freedom to become 'internal participants' in a different way from what Dworkin suggests. In Dworkin's proposal, it is our obligation to our practice that limits discussion. But we also do debate about moral issues when the context is not a particular practice or tradition. This is not to argue that we do not eventually apply what we learn through debate back to our own practice, only that sometimes it is useful to 'leave' in order to get a better perspective. This would avoid the awkward scenario in which Dworkin tries to describe how we should always approach issues as internal participants, even when we interpret something other than our own present practice. And this is also how, on Dworkin's view, social scientists operate.

I argue...that a social scientist attempting to understand an argumentative social practice like the practice of courtesy (or, as I shall claim, law) must therefore participate in the spirit of its ordinary participants, even when his participation is only "virtual." Since they do not mean to be interpreting each other in the conversational way when they offer their views of what courtesy really requires, neither can he when he offers his views. *His interpretation of courtesy must contest theirs and must therefore be constructive interpretation rather than conversational interpretation.* [Italics added]39

Dworkin offers a different set of guidelines for those of us who are not social scientists. Our concern is how to participate in the evolution of our own society and not its examination from the perspective of a social scientist. When we seek a paradigm /plateau for agreement it is because we seek a common ground that will lend structure to our discussions. If we changed the 'rules' imposed by constructive interpretation then we could seek a more equal footing between participants. If we also look for a conciliatory rather than a combative approach, then it will no longer be appropriate to say, as Dworkin does, that the interpretation of the social scientist "must contest" the interpretation offered by the ordinary residents.

In a very broad sense, the frame of reference for questions about societies is a moral one. On this very broad level neither a shared past/history nor context-specific issues are able to establish a common ground for discussion/disagreement. In his proposal for how to approach global/abstract issues all that Dworkin

minimally asks is that the convictions of interpreters fit their conceptions. But this minimal sense is not what he uses to establish a paradigm/plateau of agreement about the rough boundaries of a concept. He limits the paradigm/plateau to 'fit' with a specific society. He adds riders to this minimum requirement that continue to direct us to approach global/abstract issues in a parochial way. That the paradigm for global/abstract concepts is identified as "agreement about the rough boundaries" does not place the paradigm back on the very broad plateau of political morality. Instead it requires agreement on the level of convictions that are held by participants. As has been argued, this is very different.

The thrust of Dworkin's argument has been that we should recognize that productive disagreement takes place on the broader level of theoretical, rather than empirical, disagreement. If the distinction between concepts and conceptions were to follow this thrust, then Dworkin should encourage debate about abstract concepts themselves, about the main point of issues, rather than assuming that the concept is described by the prevailing paradigm. His proposal is designed partly to identify the common ground that members of a practice share which allows them to disagree without challenging the practice itself. But his belief that unless an abstract concept is approached from an internal participant point of view, as structured by

constructive interpretation, it will be as rootless as the 'homeless' ideals of utopias has also had an impact. He has circumvented a stage in thinking and debate in which we try to step out of ourselves and see our convictions and practice from a distance. We need not stay in this stage. We can only be useful to our own society if we return, bringing with us what we have learned. Utopian thinking encourages us to go through this stage. Dworkin's position that we cannot apply in any meaningful way what utopias propose, because they are not developed from 'reality', ignores this possibility.

Perhaps all we need to have in common, in order to not be talking past one another, is that we are all genuinely concerned with deciding how best to live. If we make this our 'plateau', rather than the limiting our plateau in accordance with the requirements imposed by constructive interpretation, then it opens the discussion to new participants, both within one society and in a trans-societal way. On this broader view new participants, bringing competing interpretations of abstract concepts, are welcomed instead of rejected. Under the terms of Law as Integrity, in contrast, even on the level of our own practice if we do not share the convictions about the abstract political ideals that our fellow citizens hold, we are left out of the discussion. We might as well leave because we have no role to play.

Chapter Five

Utopian Thinking: A Different Kind of Plateau

The whole point of Dworkin's exercise has been to argue that what he calls the 'plain fact view' is wrong--that it is not true that "[l]aw exists as a plain fact...and what the law is in no way depends on what it should be."¹

What I have tried to show is that Dworkin does what we all tend to do--we confuse utopian thinking in general with the most characteristic features of a particular type of utopian thinking and then fail to recognize it in our own thinking. What Dworkin has described in Law's Empire is not just an 'existing practice' but the direction he would like to see it take in the future. This is never made clear. Instead, Dworkin constantly urges us to agree that his description 'fits' the reality we know. Yet he too has found the need to distinguish between a 'working' theory and an academic elaboration. He has proposed 'pure' integrity to try to explain what 'inclusive integrity' cannot. He has made liberal use of ideal models, both within his theory and in his interpretation of theories he tries to supplant. He has made his concept of law inherently optimistic to try to explain how through law we can make our lives better. All

these features of utopian thinking are hidden in a description of 'existing practice'.

In urging us to agree that Law as Integrity 'fits' with our interpretation of our practice he is seeking our agreement that the goals he has advanced are ones that we share. He wants agreement on a level of morality, about questions of political ideals. If we agree with the principles and political ideals Dworkin proposes then he interprets this as agreement that what he has said 'fits' with our practice. If it 'fits' our existing practice, we can share in the excitement of being part of the society we want to become now. We don't have to wait for something else to happen. Utopian theories offer just this kind of enticement when they try to make it easy for us to believe that we can be participants in something wonderful. We could be part of Law's Empire too, if we just wanted to. If we could just see our society differently, it would be different...

The difference between overtly utopian theories and Law as Integrity is that we are more aware of what we are dealing with when we afford a utopian theory the opportunity to try to convince us. We are more leery of being caught in someone else's vision. When we consider the ideas that a utopia puts forward we use them to measure our society as much as we consider them on the merits proposed by the utopia. We can not do this when the distances or boundaries

between the utopia and our existing practice are blurred. With overtly utopian theories we are cognizant of the distance we have yet to travel. In seeking our agreement that we are already on the right path, if only we would recognize it for what it is, Dworkin minimizes the distance between the problems we still face and the political ideals he would like us to reach. Trying to anticipate the practical constraints, as in his discussions of Hercules, is still not the same as meeting them head on in real life experiences.

The role played by utopian features in his proposal is most effectively captured by his concept of 'best light'. He has set up a new dichotomy to replace those he attempts to dissolve. Either we see our own practice in its best light or we are outsiders in our own society. Constructive interpretation allows only the two extremes. Either we decide that our society is worth justifying, and see it always in its 'best light', or we are labelled skeptics who impose a 'worst light' on our existing practice. What he is arguing for is change within the system--evolutionary change. We should work to improve our practice rather than to destroy it. The tension between working within the system rather than outside of it is the same as between 'best light' and 'worst light' but the rules of constructive interpretation make this tension into a structural feature. The dichotomy is entrenched.

He does much the same with 'convictions'. The convictions we have within his world are always guided by the prevailing paradigm. We are obligated to see our own practice in its best light. We are not free to change or be critical of our own convictions because these are integrally linked to the story of our practice. When we dispute, our debates are only about competing conceptions and we are discouraged from challenging the network of thoughts and values within which these conceptions make sense. The abstract concept, the elaboration of the whole point of our practice, is beyond criticism as long as we decide the practice is worth keeping alive. Our convictions should not change or be challenged in any serious way.

As was argued in Chapter Two, the expression of utopian thinking in any age is a reflection of the philosophy or religion available to the utopian theorist. For Dworkin to attack all utopias, his interpretation of utopias must also include those such as Wells' A Modern Utopia. But since he attacks only a particular type of utopia, its features such as static perfection and the separation of 'ideals' from 'reality' which are really the focus of his attempts to revise our thinking. Since these same characteristics correspond to his idealized interpretation of the 'old' philosophies that his proposal is structured to replace, Dworkin himself reinforces the claim that utopias are outgrowths of a specific social

context and not isolated from the philosophical/religious context of their day. What he has proposed is a different philosophical framework for not only law but for social change in general. It is governed by a different mode of reasoning, an interpretive mode, which tries to account for what the traditional philosophies have not been able to.

Law's Empire is much more similar to Wells' vision than it is to those modelled after Plato. But even Wells recognized that although he was trying to break through the barriers created by what he recognized as 'old' philosophies, he himself was offering only a particular view of the 'flattened' whole. He pointed out to us that it was our responsibility as readers and critics to try to grasp the whole and 'flatten' it again, in our own way. This fits with the thrust of Dworkin's interpretive approach, in which boundaries are constantly expected to change, but Dworkin's insistence that an overall allegiance to seeing our practice as worth justifying inhibits any but superficial change. Deciphering what the 'whole' is for society is a task that requires more than one individual's vision. Dworkin seems to suggest that his description is the 'whole'.

This tendency to create an exclusive system is more characteristic of the utopias modelled after Plato than it is of 'modern' utopias. Dworkin has been trapped by his need not to be seen as one of the 'old' utopians. He has isolated perfection, a static society, and axioms created

from ideals that are not the products of any society. But he has not recognized as a negative feature the rigidity which is a structural feature of many such utopias. Although his system is not intended to be rigid in its internal workings, it creates walls and barriers as any system does. The difference is that Dworkin has tried to argue that these are not impediments. He has included anyone who should be included within the boundaries of Law's Empire. Those who are outside of it do not matter.

Our analysis of Dworkin's Law's Empire has allowed us to use the features of utopian thinking put forward in the first chapter to show how Dworkin has created restrictions which are neither necessary nor, in some cases, consistent with his own goals. It has allowed us to get a better understanding of how utopian thinking itself is not limited to theories of 'static perfection' by reinforcing the argument that utopian thinking is context-bound.

Utopias give us an opportunity to participate in a world in which meaning, value, and relationships among different concepts are made specific in a way that forces us to confront these same features about concepts we may otherwise hold in an unquestioning, unreflective way. They encourage us to participate in more than one 'world' at a time without allowing the mere fact that we are participants in any society to be the sole determining factor for our behaviour or our thinking. At the same time they encourage

us to improve the quality of our participation in the society in which we do live.

Utopian thinking addresses participants of existing practices with the goal of introducing innovative ideas which must then be filtered with an eye towards real constraints before they are applied. But first we should analyze the utopian proposal itself in order to try to understand the connections these ideas have with the rest of the meaning and value in the utopian proposal. Without this prior analysis our grasp of what counts as a 'practical' constraint in our own society is considerably weaker. In denying the utopian features of his own proposal Dworkin has made this analysis considerably more difficult. By claiming to have addressed the constraints imposed by our existing practice he discourages a critical approach to deciding what is viable and what is not. This makes more difficult than need be the integration of aspects of what he has proposed with different interpretations of our existing practice.

The one feature which survives the transition to 'outsiders' intact is the hope that Dworkin expresses--his unrelenting emphasis on those features of our practice that deserve to be enhanced. Things won't get better unless we figure out a way to move our own societies along. Whether we are now the kind of people he suggests we can be or not, he has described a social structure within which reflective individuals who respect each other, who have a conscious

awareness of their own goals and that of society could live.

Utopias give us an opportunity to participate in a world in which meaning, value, and relationships among different concepts are made concrete in a way that forces us to confront these same features about our own beliefs. We may otherwise have these beliefs in an unquestioning, unreflective way. Our capacity to move in and out of different conceptual networks is something that can improve with practice and increased awareness of the possibilities. It is important not just for the sake of questions about what we 'should do' but also because we invoke our visions of what we 'should do' whenever we 'do'. In order to really benefit from utopian thinking we must learn to apply it in our everyday lives. This proposed way of understanding utopian thinking does not conflict with what, in a general way, Dworkin himself has proposed. If he had had a different understanding of the possibilities utopian thinking makes available to us, he might have suggested this approach himself.

I have argued that our common conceptions about utopian thinking are inadequate and do not allow us to take full advantage of how we might use this mode of thinking to make our lives better. As analysis of Dworkin's case has shown, these common conceptions can have a negative, not merely a neutral, effect on our social theories.

Chapter Two Notes

1. F.E. Manuel and F.P. Manuel, Utopian Thought in the Western World, (Cambridge, Mass.: The Belknap Press of Harvard Univ. Press, 1979) p. 1.
2. See: T. Campanella, The City of the Sun, trans. D. Donno, (Berkeley: Univ. of California Press, 1981)
F. Bacon, The Great Instauration and New Atlantis, ed. J. Weinberger, (Arlington Heights, Illinois: Harlan Davidson, Inc., 1980)
3. Manuel and Manuel, Op. Cit., p. 17.
4. Thomas More, Utopia, trans. Paul Turner, (Middlesex: Penguin Books, 1961) p. 8.
5. Ibid., p. 100.
6. Manuel and Manuel, Op. Cit. p. 1
7. More, Op. Cit., see Turner's translation of Hythlodæus, p. 154.
8. Ibid., p. 131.
9. Ibid., p. 131.
10. Ibid., p. 132.
11. Ibid., p. 100 and p. 101.
12. Ibid., pp. 117-118.
13. Ibid., p. 120.
14. Ibid., p. 119.
15. Ibid., p. 124.
16. Ibid., p. 105.
17. Ibid., p. 128.
18. Ibid., p. 91.
19. Ibid., p. 119.
20. Ibid., p. 42.
21. Ibid., pp. 74-75.
22. Ibid., p. 64.
23. Ibid., p. 124.
24. Ibid., p. 131.
25. Ibid., p. 63.
26. Ibid., p. 67.
27. Ibid., p. 34.
28. Ibid., p. 63.
29. Ibid., p. 63.
30. Ibid., p. 38.
31. Ibid., p. 64.
32. Plato, Great Dialogues of Plato, eds. E.H. Warmington and P.G. Rouse, trans. W.H.D. Rouse,

- (New American Library, Scarborough: 1956), pp. 214-217, [412B-420B].
33. Manuel and Manuel, Op. Cit., pp. 118-120.
See also More's frequent references to Plato in Utopia.
For example, the introductory poem which precedes More's letter to Peter Gilles, (no page number):
NOPLACIA was once my name,
That is, a place where no one goes.
Plato's Republic now I claim
To match, or beat at its own game;
For that was just a myth in prose,
But what he wrote of, I became,
Of men, wealth, laws a solid frame,
A place where every wise man goes:
GOPLACIA is now my name.
 34. J.M. Robinson, An Introduction to Early Greek Philosophy, (Boston: Houghton Mifflin Co., 1968), p. 60.
 35. Ibid., p. 80.
 36. Ibid., p. 61.
See also F.M. Cornford, Before and After Socrates, (Cambridge: Cambridge Univ. Press, 1932), p. 63.
 37. Cornford, Ibid., p. 65.
 38. More, Op. Cit., pp. 64-65.
 39. Manuel and Manuel, Op. Cit., p. 802.
 40. H.G. Wells, A Modern Utopia, (Lincoln: Univ. of Nebraska Press, 1967) pp. 20-21.
 41. Ibid., p. 44.
 42. Ibid., p. 369.
 43. Ibid., p. 173.
 44. Ibid., p. 137.
 45. Ibid., pp. 136-137.
 46. Ibid., p. 368.
 47. Ibid., p. 264.
 48. Ibid., p. 128.
 49. R. Dworkin, Law's Empire, (Cambridge, Mass.: The Belknap Press of Harvard Univ. Press, 1986), p. 164.

Chapter Three Notes

1. Manuel and Manuel, Op. Cit., p. 28.
2. Dworkin, Op. Cit., p. 164.
3. Ibid., p. vii.
4. Ibid., see p. 15.
5. Ibid., see eg. p. 378, Dworkin's focus on the U.S.

constitution and not on what constitution
is best for all states

6. Ibid., see eg. p. 397 re: not what abstract ideals say
is best and also p. 255 re: working theory being
context specific
7. Ibid., p. 286.
8. Ibid., p. 110.
9. Ibid., p. 286.
10. Ibid., p. 110.
11. Ibid., p. 90.
12. Ibid., p. 93.
13. Ibid., p. 93.
14. Ibid., p. 93.
15. Ibid., p. 93.
16. Ibid., p. 238.
17. Ibid., See pp. 266-275.
18. Ibid., p. 189.
19. Ibid., p. 166.
20. Ibid., p. 166.
21. Ibid., p. 165.
22. Ibid., p. 164.
23. Ibid., p. 164.
24. Ibid., p. 165.
25. Ibid., p. 176.
26. Ibid., p. 166.
27. Ibid., p. 221.
28. Ibid., p. 178.
29. Ibid., p. 13.
30. Ibid., p. vii.
31. Ibid., p. 5.
32. Ibid., p. 113.
33. Ibid., p. 404.
34. Ibid., p. 401.
35. Ibid., p. 401.
36. Ibid., p. 401.
37. Ibid., p. 402.
38. Ibid., pp. 402-403.
39. Ibid., p. 404.
40. Ibid., p. 405.
41. ibid., p. 405.
42. Ibid., p. 405.
43. Ibid., p. 406.
44. Ibid., p. 407.
45. Ibid., p. 408.
46. Ibid., p. 258.
47. Ibid., pp. 208-215.

48. Ibid., pp. 65-68.
49. Ibid., p. 231.
50. Ibid., p. 65.
51. Ibid., p. 204.
52. Ibid., p. 72.
53. Ibid., p. 71.
54. Ibid., p. 73.
55. Ibid., pp. 245-246.
56. Ibid., pp. 380-381.
57. Ibid., See pp. 266-275.
58. Ibid., p. 228.
59. Ibid., p. 52.
60. Ibid., p. 52.
61. Ibid., p. 116.
62. Ibid., See eg. p. 176.
63. Ibid., p. 186.
64. Ibid., p. 275.
65. Ibid., p. 152.
66. Ibid., p. 271.
67. Ibid., p. 204.
68. Ibid., pp. 74-75.
69. Ibid., pp. 75-76.

Chapter Four Notes

1. Dworkin, Op.Cit., p. 97.
2. Ibid., p. 425, ftnt. 20.
3. Ibid., p. 424, ftnt. 20.
4. Ibid., pp. 73-74.
5. Ibid., p. 74.
6. Ibid., p. 410.
7. Ibid., p. 75.
8. Ibid., p. 74.
9. See pp. 4-5, pp. 43-44, p. 46, and p. 87.
10. Ibid., See the distinction Dworkin makes between internal and external skepticism, pp. 78-86.
For further explanations about the relationships between our moral views and our culture see also his ftnt. 27 to this section, pp. 426-428.
11. Ibid., p. 74.
12. Ibid., p. 75.
13. Ibid., pp. 92-93.
14. Ibid., see Dworkin's discussion of the stages of interpretation, pp. 65-68.

15. Ibid., p. 66.
16. Ibid., p. 66.
17. Ibid., p. 66.
18. Ibid., p. 75.
19. Ibid., p. 75.
20. Ibid., p. 275.
21. Ibid., See for example p. 2, p. 111, p. 143, p. 121, and p. 161.
22. Ibid., See for example p. 15 and p. 125.
23. Ibid., See pp. 31-37 and pp. 104-108.
24. Ibid., p. 425.
25. Ibid., pp. 424-425.
26. Ibid., p. 428, ftnt. 27.
27. Ibid., pp. 424-425.
28. Ibid., p. 74.
29. Ibid., p. 423, ftnt. 15.
30. Ibid., p. 104.
31. Ibid., For Dworkin's treatment of the 'protestant attitude' see p. 190, p. 252, p. 413.
32. Ibid., p. 105.
33. Ibid., pp. 47-48.
34. Ibid., pp. 31-37.
35. Ibid., See his discussion of the plain fact view, pp. 6-11, and of the semantic sting, pp.45-46.
36. Ibid., pp. 13-14.
37. Ibid., p. 14.
38. Ibid., pp. 227-228.
39. Ibid., p. 422, ftnt. 14.

Chapter Five Notes

1. Dworkin, Op.Cit., p. 7.

BIBLIOGRAPHY

- Bacon, F. The Great Instauration and New Atlantis.
Ed. J. Weinberger, Arlington Heights, Illinois:
Harlan Davidson, Inc., 1980.
- Campanella, T. The City of the Sun: A Poetical Dialogue.
Trans. D. J. Donno,
Berkeley: Univ. of California Press, 1981.
- Cornford, F.M. Before and After Socrates.
Cambridge, Mass.: Cambridge Univ. Press, 1932.
- Dworkin, R. Law's Empire.
Cambridge, Mass.: The Belknap Press of Harvard Univ.
Press, 1986.
- Lovelock, J. The Ages of Gaia.
Toronto: Bantam Books, 1990.
- Manuel, F.E. and Manuel F.P. Utopian Thought In The
Western World. Cambridge, Mass.:
The Belknap Press of Harvard Univ. Press, 1979.
- More, T. Utopia.
Trans. P. Turner, Markham, Ont.:
Penguin Books, Canada Ltd., 1961.
- Plato, Great Dialogues of Plato.
Trans. W. H. D. Rouse, New York:
New American Library, 1956.
- Robinson, J.M. An Introduction to Early Greek Philosophy.
Boston: Houghton Mifflin Co., 1968.
- Wells, H.G. A Modern Utopia.
Lincoln: Univ. of Nebraska Press, 1967.