

## THE TRANSCENDENT LAWYER

By Adam Liptak,

*Ronald Dworkin, perhaps the most influential legal philosopher of the last century, spent last fall on Martha's Vineyard. He was on sabbatical from the law school, and he was working and worrying.*

*He spends half the year in England, and was eager to get back to London, but he could not leave, he said, until the presidential election was over. "It's a tribal thing," he explained. "I don't want to be away in this terrible, critical moment."*

I went to see NYU's Frank Henry Sommer Professor of Law last October, and my flight from Boston, on a tiny propeller plane, provided some unwelcome excitement. I had tried to lose myself in an imposing book called *Dworkin and His Critics*. But the impenetrable essays, on topics like "Associative Obligations and the State," only added a note of personal inadequacy to the stabs of terror.

Dworkin is the worldliest of philosophers, and it was odd but somehow reassuring to see him on an all but deserted island on a cold New England Sunday. He wore an old yellow sweater, green khakis and white tennis shoes, and, as he tucked me into his Jeep, I took further comfort from the fact that there was the detritus of ordinary life on its floor, a book-on-tape of a Patricia Cornwell mystery. I had convinced myself that he subsisted on Aristotle and Kant, leavened perhaps by a little Cardozo and Holmes.

He would turn 73 in December, but he remains fit and sharp—a vivid personality of enormous intellectual ambition. Oddly, though his towering body of work is grist for symposia, dissertations and debate, Dworkin himself has never been the subject of a magazine profile.

To break the ice, I told him I had just recently disabused myself of two assumptions. I had thought he was English, based on his dual appointments, first at NYU and Oxford and now at NYU and University College London, and on his elegant, limpid writing style. And I had surmised, thanks to a certain abstraction in his more conventional legal writings, that he had never actually practiced law. But, as his election agitation suggested, Dworkin is emphatically American. And though his career has taken many fascinating turns, it was for a few years quite conventional: he was an associate at Sullivan & Cromwell from 1958 to 1962.

During our daylong conversation, he set me straight about a few other things. Dworkin is as engaging as his work can be daunting, and he has crammed a lot into the life of a scholar, straddling disciplines and continents. He has ventured beyond the academic, making his mark as an influential public intellectual through his writings in the *New York Review of Books*, for example, and even took steps during the early 1990s to help organize a secret discussion of a post-apartheid constitution in an Oxfordshire country hotel between lawyers from the African National Congress (then in exile) and sitting South African judges. Simply put, “Ronnie is the primary legal philosopher of his generation,” said Guido Calabresi, a former dean of the Yale Law School and now a judge on the United States Court of Appeals for the Second Circuit.

His career has intersected with some of the largest figures in Anglo-American law, notably H.L.A. Hart, the pivotal British legal philosopher of the 20th century, and Learned Hand, the greatest American judge never to serve on the Supreme Court. In both cases, Dworkin’s theories arose in opposition to theirs. Harold Bloom, the Yale literary critic, would say there was an element of agon in this, a struggle with precursors.

But the struggle was in both cases marked by personal warmth, and the record suggests that Dworkin charmed both men even as he disagreed with them. He is that rare philosopher who brings real zest and élan to the enterprise, which must have helped. “Dworkin is probably the least ascetic person I know, and one of the most worldly,” said Thomas Nagel, the noted philosopher, NYU University professor and Dworkin’s partner in the dazzling Colloquium in Legal, Political and Social Philosophy they lead at the university each year. “This love of pleasure and of the social, political and material world of the present moment coexists with the most intense seriousness about abstract theoretical and moral questions, and a matchless capacity to engage in concentrated productive thought without showing any strain. He works ferociously hard, but he manages to give the impression that he’s just amusing himself. He is helped in this by a remarkable facility.”

Dworkin humored my questions about his life and seemed pleased to have some company. He flashed an occasional crooked smile as he remembered an amusing moment or triumph. But he was most eager to talk about his big new book, one that will draw together the many strands of his extraordinarily varied legal and philosophical work. It is to be a summation and a consolidation. “I am trying,” he said, “to bring together my work in law and my work in political philosophy and moral philosophy and the theory of interpretation and the kitchen sink and to get everything into a—I shouldn’t use the word system, because that has the wrong

connotation—but in general a network of ideas so that each part is drawn from and reinforces the other.”

There is much to synthesize. In a survey published in 2000 in the *Journal of Legal Studies*, three of Dworkin’s books were among the 11 most cited legal books published since 1978: *Taking Rights Seriously* (1978) and *A Matter of Principle* (1985), two collections of seminal essays, and, at number two, *Law’s Empire* (1986), his masterwork on the nature and role of adjudication. (John Hart Ely’s *Democracy and Distrust* was number one.) Dworkin’s other major works include *Life’s Dominion* (1993), on abortion, euthanasia and the questions they raise; *Freedom’s Law* (1996), a collection of essays on the Constitution; and *Sovereign Virtue* (2000), on equality.

Before we did any intellectual heavy lifting, we took a little tour of the island, where Dworkin and his late wife, Betsy, bought a plot of land in 1969. In those days, he said, the island had a literary and artistic character. “Now it’s much more money,” he said. “Big money and media.” Dworkin drove fast down the narrow roads of Menemsha and pulled over at Larsen’s, where we had a late morning snack of superb oysters and clams.

Then we continued to Dworkin’s lovely, spare, light-filled house. It overlooks a little inlet, and its windows rattled in the strong autumn wind. One could sense that Betsy Dworkin, who died at 66 in 2000 and who is universally described as a vivacious woman of exceptional beauty, taste and discernment, had once filled the house with an energy that was missing when Dworkin was there alone. I asked Dworkin for its architectural pedigree. “I would describe the style,” he said haltingly, “as, I don’t know, beachy modern.”

He added that his other homes are more substantial. “In London,” he said, “we have a larger house.” And in New York, the university provides him with a home in the singularly picturesque Washington Mews. “People often say, which is home?” he said. “I don’t have an answer. I would miss not being in New York for part of the year, and I would miss not being in London.”

He made lunch for us. Dworkin is famously comfortable at the table, but perhaps not so much in the kitchen. That morning, he confessed, he had called his close companion, Irene Brendel, in London for advice on how to make salad dressing. I helped set the table in the main room, a loftlike space with high ceilings and a dining area near the open kitchen. Dworkin did not resist my questions about his biography so much as convey that he considered them odd and trivial. “I love these

stories,” he exclaimed at one point, bustling around in the kitchen in search of something. “I love to think about those days. But now my mind is on salad bowls.”

A thinker and a lawyer

Ronald Myles Dworkin was born in Providence, in 1931. His parents were divorced when he was young, a rare thing in those days. Dworkin’s sense of his father, David, is as a consequence hazy and distant. “My father was, I think, born in Lithuania and came to America as a young child,” Dworkin told me.

His mother, Madeline, remarried soon after the divorce, and her second husband died not long after, of a heart infection. She had been a musical prodigy, and she raised three children on her own by teaching piano. Dworkin was the middle child.

His sister, Fern Cohen, is five years older, and lives in New York. His brother, Alan, is a lawyer in Rhode Island. Dworkin attended what he called “a classical school” along the lines of the Boston Latin School, and he did well. “It may have to do with a personality defect, which is that I was very competitive,” he said. “You know, I was one of those obnoxious people who wants to win every prize. I was a Boy Scout, I was an Eagle Scout, I got every merit badge.”

He went to Harvard on scholarship. To hear Dworkin tell it, the move was almost happenstance. “Somebody had endowed a full scholarship for a graduate of a Providence public school,” he recalled, “and there were rarely any takers.”

The atmosphere in Cambridge was earnest and exciting, colored by postwar optimism and intellectual excitement. He first considered studying literature.

“We were turned on by James Joyce, by T.S. Eliot,” he said. “It was the days of those very revolutionary kinds of work.” He belonged to the Signet Society, an artistic and literary club. “I was pretentious as hell,” he recalled. “I had a wonderful time.”

But his interest soon turned to philosophy, and to philosophers. He started hanging around with graduate students and junior faculty in the philosophy department, drinking and playing poker. After college, at Oxford as a Rhodes Scholar, Dworkin met Calabresi, who was impressed by his fellow American. “Ronnie did spectacularly well with his left hand,” Calabresi recalled.

Dworkin did not study with the famous H.L.A. Hart at Oxford, but it just so happened that Hart was one of the examiners the year Dworkin finished, and was assigned to read Dworkin's exam. Hart held the Chair of Jurisprudence, was already well-known and was to become a towering figure in legal philosophy as the father of positivism, largely by dint of his 1961 masterwork, *The Concept of Law*. "The nub of Hart's theory was the startlingly simple idea that law is a system of rules structurally similar to the rules of games such as chess or cricket," Nicola Lacey, a law professor at the London School of Economics, wrote in her recent groundbreaking and somewhat controversial biography of Hart, *A Life of H.L.A. Hart: The Nightmare and the Noble Dream* (Oxford University Press, 2004).

Even from the beginning, Hart was, according to Lacey, both impressed and intimidated by Dworkin. "Herbert," Lacey wrote, referring to Hart by his first name, "was excited by the performance of an American student who had scored an alpha (the highest mark) on every single one of his papers."

"Herbert went on to express considerable anxiety about the implications of this student's views for the arguments of *The Concept of Law*," Lacey continued, referring to Hart's key work. "The student's name was Ronald Dworkin."

The so-called Hart-Dworkin debate has been the axis around which modern legal philosophy has revolved for decades now. Those papers made Hart anxious because they foreshadowed Dworkin's later criticism of his work, what Lacey would call, "a devastating critical onslaught" on Hart's "over-schematic account of adjudication." Hart, a good sport, had the presence of mind to save Dworkin's jurisprudence exam, quoting from it at an after-dinner speech years later, after the younger man had succeeded him in the Oxford Chair of Jurisprudence.

Dworkin's signal contribution, and the theme that runs through much of his work and is most closely associated with him, is his critique of positivism, which was and is among the leading schools of legal philosophy since at least Hart. Positivism holds that valid legal rules can all be identified without taking morality into account: it holds, that is, that legal reasoning is all descriptive. Dworkin insists that moral principles must necessarily have a role to play in legal analysis and interpretation, at least in those

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cases where the existing rules do not supply judges with an answer. The interpretive enterprise that judges engage in is often a moral one. The great abstract phrases of the United States Constitution—"equal protection of the law," "due process"—are moral principles, he says, that judges must fill with moral content.

That critique, though foreshadowed in Dworkin's student work, would not fully ripen for another decade. In the meantime, Dworkin decided to study conventional law. He was a little cryptic with me about this swerve in his studies.

"I got the idea that my time at Oxford was a chance to learn something else beside philosophy," he said. "And what a convenient way to learn law. It didn't matter to me that it was English law I was going to learn, because I was not going to be a lawyer. Somehow, and I don't know how it happened, the whole idea of being a philosopher evaporated. And I suddenly thought, 'I want to be a lawyer.'"

He returned to Harvard in 1955 for an American law degree, entering in the second year. "They gave me credit for Oxford—which was silly. I shouldn't have done that. I've never taken a course in criminal law, for example. Critics say I've never read a case. I've almost certainly read fewer than most of them have."

Here, too, Dworkin handled the academic requirements with ease.

"Law school was not hard," he said. "Law school is really different now. In those days it was just applied reasoning. I think now you really have to know economics or at least you've got to have some conceptual awareness of it, and of a number of different fields. You've got to be politically engaged. You've got to be aware of the main schools of sociology, I think, to do very well at law school." At Harvard in 1957, when he graduated, he said, "all you had to be was reasonably adept at moving arguments around."

Calabresi said he suspects that there is something in Dworkin's unusual legal training that explains aspects of his idiosyncratic approach to the law. "His basic law training was that of an English law training," Calabresi said. "Studying law in England can give you a slightly odd feeling for the cases. It sounds the same, but it has a different meaning." He means that the same ruling, based on similar facts, can have a wholly different impact in the contexts of the two legal systems and legal cultures. Dworkin's facility with the law is a bit like someone speaking English fluently, but with a slight accent.

Dworkin's philosophy of American constitutional law in large part is rooted in what he claims is the proper reading of a relatively small number of phrases of the Constitution. "Many of these clauses," he writes in *Freedom's Law*, "are drafted in exceedingly abstract moral language. The First Amendment refers to the 'right' of free speech, for example, the Fifth Amendment to the process that is 'due' to citizens, and the Fourteenth to the protection that is 'equal.' According to the moral reading, these clauses must be understood in the way their language most naturally suggests: they refer to abstract moral principles and incorporate these by reference, as limits on the government's power."

## A BRILLIANT CAREER—DISAGREEING WITH THE RIGHT PEOPLE

After Hart, the other great figure in Dworkin's early professional life was Judge Learned Hand. As Dworkin tells it, with becoming modesty or authentic befuddlement or a combination of the two, he simply stumbled into a clerkship in 1957 with the great man, which was a fabulous prize in itself and often a stepping stone toward a Supreme Court clerkship with Justice Felix Frankfurter.

"I don't know how it came about," he said. "Nobody on the law faculty knew me very well, but somebody thought I'd be a good clerk for Learned Hand."

Hand, who was 87 by then, had taken senior status on the United States Court of Appeals for the Second Circuit, in New York, meaning he was semiretired and could choose the cases he wanted to hear. He also was working on the Holmes Lectures, a series of three talks that he would deliver at Harvard the following year. They were, it turned out, a vigorous attack on judicial overreaching and caused a considerable stir in legal circles.

Hand had seen a lot of clerks come and go. But he held Dworkin in especially high regard, calling him "that law clerk to beat all law clerks" in a letter to Justice Frankfurter. The honor of that compliment, related in Gerald Gunther's biography, *Learned Hand: The Man and the Judge* (Knopf, 1994) was lessened only slightly by the fact that Hand referred to his clerk as "Roland Dworkin."

"I showed up the first day and we had a conversation," Dworkin remembered. "Hand had facing desks for himself and his clerks, so I worked in the same room as him. And he said, 'I don't know what I'll do with you. Some judges have their clerks write first drafts. I don't know how you write. I write very well.'"

Dworkin let out a big laugh as he told the story.

He continued, quoting Hand: “‘Some judges ask their clerks to look up the law.’ He looked around. All four walls were covered with law books, except for some small windows. He said: ‘I wrote most of those. I know what they say. So what am I going to do with you?’ He said: ‘Well, I’ll tell you what I’m going to do. I write and you read. You tell me what you think. By the way, I’m giving these lectures at Harvard. Why don’t you tell me what you think?’”

“And that was the dominant thing of the term. He was writing the Holmes lectures in which he ended by saying the *Brown* case”—*Brown v. Board of Education*, the school desegregation case of 1954—“was wrongly decided. And he announced his theory of judicial review.”

Hand said that judges had no business making value judgments, which should be left to legislatures. “Hand’s startling thesis,” Gunther wrote, “clearly outside the mainstream of modern legal thought, was that ‘due process’ and similarly vague constitutional phrases were essentially unenforceable by the courts.” Dworkin had pushed Hand to follow the implications of his theory of judicial restraint to its conclusion—but in the hope that Hand would renounce it. If *Brown* was wrongly decided under Hand’s approach, Dworkin suggested, there must be something wrong with the approach. Hand had wanted to avoid discussing the case, though it was the elephant in the room. Later viewed by history as a triumph, at the

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time, *Brown* was subject to much criticism for what was said to be judicial activism ungrounded in the Constitution.

“You simply cannot duck that one,” Dworkin told Hand. “We argued and argued,” Dworkin told me, “and finally I said, ‘Judge, you aren’t saying anything about the *Brown* decision. In your eyes it must have been wrong.’”

“‘Fuck you,’ he said,” Dworkin continued. “Steam came out of his eyebrows and he grabbed his yellow pad, and he started to scribble, and he started throwing away and throwing away and throwing away.” Hand could not produce a draft which could justify the result in the *Brown* case using methods of constitutional interpretation which met his standards—that were what he considered principled.



In the end, in his frustration, Hand turned to Justice Frankfurter for advice. The Justice was in a similar bind. He had signed the unanimous *Brown* decision but was wary about its implications. “Frankfurter wanted Hand to endorse the decision, which he, Frankfurter, had joined,” Dworkin explained, “but he wanted Hand to endorse it on a very narrow ground, so that it was permitted by Frankfurter’s anti-judicial review standards.”

“So he and I argued about that and finally in a way he adopted my view,” Dworkin went on. “But it wasn’t the outcome I wanted, because I wanted him to give up his theory.”

Dworkin’s view, of course, was that it was perfectly proper for constitutional courts to decide cases like *Brown* and to decide them based on broad moral principles.

As with H.L.A. Hart, Dworkin worked out his views in opposition to the older man. “I disagreed with everything he said,” Dworkin said of Hand, “but he was a very good person to have to argue with.”

## MEETING THE RIGHT PARTNER

Dworkin met Betsy Ross, a New Yorker of great verve and sophistication, during his clerkship with Hand. On one of their first dates, Dworkin had to drop off a memorandum at the judge’s home and asked Ross to come along. It would, he promised, “only take a second.”

“But when Hand answered the door,” Dworkin wrote in *Freedom’s Law*, “he invited us in, made dry martinis, and talked to my new friend for almost two hours about art history, his old friend Bernard Berenson, the state of Harvard College, New York politics, the Supreme Court, and much more. When we left, walking down the brownstone steps, she asked, ‘If I see more of you, do I get to see more of him?’”

They married in 1958, near the end of the clerkship. “Law clerks then normally received a month’s paid vacation at the end of their service,” Dworkin recalled in *Freedom’s Law*, and he asked Hand for that month off.

“He told me that he couldn’t give me a vacation,” Dworkin said. “He knew that the other judges did it, but it’s taxpayers’ money and he didn’t think that the government should pay for a young man’s vacation. He’d never done it and he

wasn't going to start now. On the day of my wedding he gave me his own personal check for the amount of the vacation pay."

Dworkin's greatest blunder, by his own admission, came after the clerkship with Hand, when Dworkin had a choice to make. He could clerk for Felix Frankfurter or go to work as an associate at Sullivan & Cromwell. He chose the firm.

"When I was offered the chance to clerk for Hand I went to a senior partner of the

*Talking Points: The erudite Dworkin is never at a loss for words, whatever the setting. On the lecture circuit in China; Dworkin's wedding day, 1958.*

firm and said that I'd like to postpone coming for a year," Dworkin said. "He said clerking is an exaggerated option. But he said okay. and I went and clerked for Hand. And at the end Hand asked if I wanted to clerk for Felix Frankfurter. And I said I had to go back to Sullivan & Cromwell."

"To get the blessing of some law firm?" I asked, incredulously. "Not a nice story," Dworkin said, laughing. "The senior partner said, 'Look, a year, fine. But this is a very exciting period of legal practice and the sooner you get into it the better, the more fun you'll have.'

"This was a very serious mistake and I can't actually put together why I made it. I was just anxious to get started. I later learned that many lawyers thought it one of the great advantages of clerking for Learned Hand that they might get to work for Felix Frankfurter. That's how it worked. Obviously it was a crucial missed opportunity. I missed a great opportunity."

On the other hand, things might have gone differently after a Supreme Court clerkship, and not necessarily better. "It's not clear I would have gotten into the academic world as soon as I did because I think I would have made friends and connections in Washington that might have sent me into more of the governmental world," he said. "It's not at all clear that Stanford Law School would then have approached me when they did. These are the counterfactuals. How do you know what would have happened?"

In any event, Ronald Dworkin was for the next three years a lawyer specializing in, of all things, international commercial transactions. It did not engage him fully.

I sensed, I said, that the ordinary work of lawyers did not especially interest him. “I don’t think law is very difficult,” he said. “Compared to certain kinds of philosophy, compared to mathematical philosophy, for instance, law is very easy. I think being a lawyer takes considerable skill. But I don’t think it’s amazingly difficult.”

Nor did his career suit Betsy, who missed him as he worked late nights and traveled the globe. Dworkin recalled getting a telegram from her in Stockholm, where he was working on a deal. He had failed to deliver on a promise to be home by his birthday.

“By next year,” the telegram said, “you will have a new job or a new wife.”

The former Betsy Ross studied history and literature at Radcliffe, was a Fulbright Scholar in Paris and had two master’s degrees, one in the history of fine arts from Harvard, the other in social policy from the London School of Economics. She wrote about art, helped run a poverty program in the New Haven public schools and taught social policy and administration in London.

The Dworkins had twins, born in 1961: Anthony, a writer and expert on war crimes, is based in London, and Jennifer, a philosopher and filmmaker, is based in New York. At a memorial service for their mother, Nagel recalled her as “a perfectionist with strong responses to how everything looked and felt and functioned.”

“She knew,” Nagel continued, “how to create beauty and pleasure around her, whether she was cooking a delicious meal for a group of friends, or dressing for the evening, or designing and furnishing a house, or arranging a temporary home for a few weeks in some gorgeous part of the world.” As the story of Dworkin’s life unfolded over a simple lunch during our day together—avocado, lobster, salad, a bottle of good Italian wine—he often returned to the role Betsy played in helping him decide where to live and what to do.

A propitious teaching opportunity arrived not long after the Stockholm telegram. Dworkin said it literally arrived unbidden. “I got an offer from Stanford Law School, from someone who came into my office,” he said. “Stanford Law School had a dean at the time who only wanted people who had been practicing lawyers.”

*Playing ball with his son, Anthony, outside Trumbull College at Yale in the late 1960s.*

But the thought of living in Palo Alto did not please Betsy. “We flew out,” Dworkin recalled. “Betsy was fearful of so dramatic a change. She was a New Yorker in every degree. And she couldn’t imagine living on the West Coast.”

The University of California at Berkeley offered Dworkin a position as well, but that did not solve the West Coast problem. Berkeley asked a Yale law professor, Harry H. Wellington, to plead its case. Wellington, who would go on to become dean of the Yale Law School, mentioned the assignment at a lunch with several colleagues, including Calabresi. “Guido remembered me from Oxford and suggested that Yale interview me,” Dworkin said.

The idea of an academic life appealed to the Dworkins. Interviews were arranged, lunches had, and the young associate was soon offered a job at Yale. Like most junior faculty members, he taught basic law school courses like conflicts and tax. “I took a class from Dworkin on international trade transactions,” Monroe E. Price, a former dean of the Cardozo Law School and now a professor there recalled. It was, of all things, “on a Liberian mining deal.”

Dworkin was a contemporary of Robert Bork at Yale Law School, and they taught a class together, on economic theory and the law. It was a curious combination even then, and Dworkin shook his head as he talked about a problem Bork presented to the class.

“Too many people on the lifeboat. One of them has to go overboard. How do you decide? And then he unveiled his theory, which was, assuming you have ways of collecting on promises, you have an auction and the one who can pay the least goes over the side. Students were appalled. And it was in that class that I got the sense that this was a kind of Marine Corps bravado, that he was going to make his mark épater-ing le bourgeois.”

Many years later, Dworkin opposed his former colleague when President Reagan nominated him to the Supreme Court in 1987. “He uses original intention as alchemists once used phlogiston,” Dworkin wrote in *The New York Review of Books*, “to hide the fact that he has no theory at all, no conservative jurisprudence, but only right-wing dogma to guide his decisions.”

Bork returned fire in *The Tempting of America*, the book he wrote after his nomination was defeated. “Dworkin writes with great complexity but, in the end, always discovers that the moral philosophy appropriate to the Constitution

produces the results that a liberal moral relativist prefers,” Bork wrote. “Nothing in the Constitution empowers a judge to force a better moral philosophy upon a people that votes to the contrary.”

## ARRIVING AT NYU, VIA LONDON

It’s not usually the role of an Oxford professor to appoint his successor, but H.L.A. Hart took an active role in arranging for Dworkin to follow him as Professor of Jurisprudence at Oxford. He urged Dworkin, who had been at Yale for seven years, to apply for the position.

It was an attractive idea. But Dworkin, and especially Betsy, had mixed feelings. On the one hand, Dworkin was nostalgic for his years there. “I adored Oxford,” he said. “My memories were very clear and I loved it. I loved the life of the philosophical community. Endless talk over wine, over dinner. Long walks in the meadows. It isn’t like that anymore, and I suppose it never really was like that. But I saw it that way. That was my Rhode Island Yankee view.

“Betsy said if you want to teach out of the United States, teach in Paris, which she adored. She had developed no love for England: she liked to joke that King’s College Chapel, at Cambridge, was copied from the Yale Law School. Of course it was the other way around. So I said no, I wouldn’t apply.”

A letter offering him the job nonetheless arrived.

“And so,” Dworkin said, “I wrote to friends at Oxford and asked whom to write to say that I would come on condition that I could leave three years later. And they said, ‘You Americans! There is no one to write such a letter to. And what a silly letter! Come and leave when you’re tired of it.’”

Lacey wrote that the offer was a sort of sacrifice for Hart. “Herbert was painfully aware that Dworkin was already promising—or threatening—to become his most influential critic,” she wrote. “In securing the part of his legacy which pertained to the orientation and quality of his field, he was adding the prestige of the Oxford Chair to what he saw as the most vigorous critique of his personal contribution.”

But, life at Oxford was not as sweet as Dworkin had remembered it. “Betsy never fully warmed to Oxford,” he said. “And with good reason: Everything revolved around the colleges, from which wives were then systematically excluded. “So we

decided to move to London. That was the end of our coming back to America full time. Betsy fell in love with London, and London fell in love with her.”

Dworkin’s students remembered him as an engaging and intimidating figure. “I remember writing my weekly or biweekly essay and trudging up to his rooms at University College in Oxford and being cheerfully destroyed by Ronnie as he smoked cigars,” said Stephen Perry, now a professor at the University of Pennsylvania Law School. “He smoked cigars in those days.”

Dworkin was, Perry remembered, an imposing figure. “He always stood out at Oxford,” Perry said. “He was flamboyant, always extremely well dressed, very witty and very extroverted. He’s a public figure. He has a reputation beyond the academy. He’s a brilliant conversationalist.”

To this day, Dworkin remains a larger-than-life personality, Nagel said. “He has a huge appetite for the real and material world and its aesthetic aspects. He dresses much more elegantly than anyone academic I know. He always was the person who had the latest computer, and people like me would turn to him for advice. He loves to travel.”

Oxford alone did not satisfy Dworkin. “I can’t have my academic life just over here,” he recalled thinking at the time. “It’s just so much more exciting in America, particularly in law. So it worked out that I got joint offers. I was offered various arrangements whereby I would spend half my time in America and half in England. Harvard made me a very attractive offer, and I taught there, I think, three visits to see how that would work out. But in the end I decided to go to NYU.”

He arrived thirty years ago, in 1975. NYU was a good but not great law school in those days, and many people there could hardly believe they had succeeded in landing him. “It was a pretty heroic thing to do,” recalled Lawrence Sager, who helped recruit Dworkin and is now a law professor at the University of Texas. The very attempt to entice Dworkin, he said, “was treated as a dubious and quixotic enterprise.” And in the end, it was not the school alone that made the difference. “Some of it had to do with New York being a city that would be capable of handling him,” Sager said. Dworkin said Betsy was reluctant to return to Harvard, where she had been a student for many years. “‘New York has much more variety than Cambridge,’ he remembers her saying. ‘Let’s live in New York.’”

“The day I was trying to decide this,” he went on, “we had dinner with Arthur Schlessinger, who had left Harvard and moved to New York. And I said to Arthur,

‘Do you regret not being at Harvard?’ He said, ‘Are you mad? There’s nothing to regret. New York is a place for grown-ups.’ That turned out to be right.”

NYU was nonetheless an unknown quantity. “I had no idea that NYU would turn out to be what it has become,” Dworkin said. “It all happened in the administration of John Sexton. You got a sense of what imagination and, particularly, enthusiasm could do. And suddenly I found myself with this joy, with what I think of as the best law school. Certainly for me.”

Dworkin himself had something to do with the Law School’s recent success. “To a degree that’s quite extraordinary, he had a great impact on NYU’s law school,” Sager said. “He modeled and gave people permission to pursue sustained, probing, rigorous analysis. To see someone do it so ruthlessly and well allowed the rest of us to think we should do it.”

“He really had a major impact on the institution from top to bottom. He helped develop the NYU school of constitutional jurisprudence—philosophy, grounded in normative theory rather than text or history, subtle and complex. This was the place you got to the bottom of things, where reason was the coin of the realm.”

Dworkin no longer teaches standard-issue law school classes. Rather, he and Thomas Nagel conduct colloquia, 14 times in a semester, on Thursdays, and Dworkin teaches a separate seminar, connected to the colloquia, for students alone.

The format of the colloquia sounds at once flattering and terrifying. A guest is invited to submit a paper. Then Dworkin, Nagel and other faculty and visitors critique it for several hours. “The people who come to it are, I think, almost uniformly grateful,” Dworkin said. “They get an awful lot out of it. To get a group of people, a group of your peers, to spend that much time on a single essay. I offer a paper myself each year. It’s the best criticism I’ve ever had.”

Nagel was more understated. “We treat them reasonably well,” he said of their guests. “It’s a higher level of attention to your work than you usually get.”

Threads run through the colloquia, if only by coincidence, Nagel said. “There is a zeitgeist, you find,” he said. “One year, everybody’s talking about international law. The next, it’s all about affirmative action. So there tends to be a sort of clustering. But we don’t impose it.”

COMING UP WITH ORGANIZING PRINCIPLES

After lunch, Dworkin turned the discussion, which had mostly centered on personal matters, toward his academic work. He is at work on a book tentatively called *Justice for Hedgehogs*. The title is a reference to Isaiah Berlin, the liberal political philosopher and historian, who famously divided people into hedgehogs and foxes, based on an ancient Greek parable. The fox knows many things, the parable goes, but the hedgehog knows one big thing.

“The key idea begins in the theory of truth. I want to argue that there is an important distinction about truth between the domain of science and the domain of interpretation.

“There are many forms of interpretation, many genres we might say—literary, artistic, historical, legal, conceptual. I want to argue that though in science the purpose of the inquiry has no bearing on the truth of the claims made, in interpretation, it does.”

Interpretation’s purpose, he said, figures in the test of its success.

“In literary interpretation, for example,” he said, “your understanding of what the point of the whole activity is—is it actually to heighten literary experience, is it to enhance literary value, is it biographical, that is, explanatory of what forces led Yeats to write as he did?—is going to give you your standards of success in deciding how to read a particular poem.”

I nodded my head occasionally.

“There are two possible mistakes,” he went on. “One is to think there is no truth in interpretation,” as in, he said, the work of Stanley Fish, the literary theorist and law professor—“that it’s just the power of the interpretive community you belong to. There are different interpretations but no right or wrong ones. We have to resist that. In fact, claims about truth are at the center of interpretation. You can’t imagine someone who spends his life writing about the meaning of the French Revolution and then on the last page of his 2,000-page tome says, ‘Well, that’s my opinion. Of course there are other opinions and they are equally good.’ Or a judge who says, ‘This is my interpretation of the criminal law—this man has to go to jail for the rest of his life—but there are other judges who have other opinions and there’s no truth here.’ I try to explain in this book why that would be a mistake.” The second mistake, he said, is “to divide the different domains of value.” “You can’t divorce political morality from personal morality,” he said. “You can’t



divorce morality from ethics, by which I mean people's ideas of what it is to live well. All of these have to form an integrated network of ideas. And that's not just for aesthetic reasons because we like to tie everything together. It's because, when you think about the character of interpretive truth and the character of interpretive argument, you see that everything has got to hang together. That's why I call this the hedgehog's view. "Now this means that in this book I'll have to recapitulate a good deal of what I've written about distinct topics: about equality, law, morality, personal values and the meaning of life. All of these will need chapters showing their interdependence. In past work I've tried to spread the net wider than, let's say, most legal philosophers have, but now I need to gather it all together."

Does philosophy have the same tradition of argument that the law does? I asked.

"That's what philosophy is," he said. "Philosophy is interpretation. Philosophy largely interprets itself. In my view that is what literary critics do. They interpret the course of literary criticism."

Okay, I continued, but how does one choose the proper mode of interpretation?

"That itself is a controversial issue, of course," he said. "But I think there's a vivid example of the right mode in the common law method in adjudication."

He gave an example: Judge Benjamin Cardozo's 1916 New York Court of Appeals decision in *MacPherson v. Buick Motor Co.*, the seminal product-liability case.

"There's a tradition of deciding torts cases in a certain way," Dworkin said. "Cardozo comes along and says, 'Look at that tradition in a different way.' Actually, we've all been supposing that we owe a duty of care to our neighbor. That's what's actually been going on in tort law, though nobody ever realized it. Cardozo doesn't say let's begin a new tradition. He says, 'This is how best to understand the tradition we have. This is what best ties it all together. This is what best shows its purpose and value.' It's a purposive reunderstanding of an activity. And philosophy does that all the time. That is, when a new school of philosophers come along, they don't say, we've got a new subject now. They say, this is the right way to do philosophy. Well, the word 'philosophy' has got to have a reference, and it refers to a tradition. They say, in effect, let's see that tradition a different way."

I asked whether the year with Hand, who had taken senior status and with it a reduced workload, had kindled any judicial ambitions in Dworkin. "He was retired,

so he could choose,” Dworkin said. “I didn’t like the idea of having to work on whatever comes through the door.”

“Obviously,” he mused, “any lawyer would like to be a judge on a very high court, at least on the highest court.” In general, though, “there seem to be enormous disadvantages. One is that it’s not necessarily interesting. The other is that it’s crucially important, day by day. There’s no room for playing with ideas.”

He remains tremendously engaged with the Supreme Court’s constitutional jurisprudence. And he said he has been pleased with some of the Court’s recent decisions. He mentioned *Planned Parenthood v. Casey*, the 1992 decision that reaffirmed the constitutional right to abortion; *Lawrence v. Texas*, the 2003 case striking down a Texas law making gay sex criminal; and last year’s cases on the rights of people designated as enemy combatants and the hundreds of prisoners held at the naval base in Guantánamo Bay, Cuba. “In all these cases,” he said, “the dominant voice you hear is about justice and injustice and what a decent society will tolerate and what it won’t.”

There are echoes of Dworkin’s work in all of these decisions. One hears it most distinctly, perhaps, in *Casey*, in a passage Dworkin praised in the *New York Review of Books* soon after the decision came down. “Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education,” Justices Sandra Day O’Connor, David Souter and Anthony M. Kennedy wrote in a joint opinion. “These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”

Dworkin would have written it better, but the fundamental animating mode of analysis—that the great open-textured phrases in the constitution should be given meaning as moral principles—is his. It is an approach that drives critics nuts. In his dissent in the *Lawrence* case, Justice Antonin Scalia mocked his colleagues, calling the above quoted words the “famed sweet-mystery-of life passage” and “the passage that ate the rule of law.”

Yet Dworkin told me that he feels some intellectual kinship for Scalia. “My own view,” he said, “is that the Constitution is the codification of some very abstract

principles of political morality. I think he thinks so too. He and I couldn't disagree more about what those principles require."

*I adored Oxford. Endless talk over wine, over dinner. Long walks in the meadows. It isn't like that anymore, and I suppose it never really was like that. that was my Rhode Island Yankee view.*

They also disagree about the increasingly contentious issue of whether American judges should pay attention to the work of foreign courts, as the Supreme Court did in *Lawrence* and in *Simmons v. Roper*, the recent case striking down the death penalty for juvenile offenders.

Dworkin welcomed the developments. "These problems are all the same," he said. "We have the same basic philosophical issues facing us. What is the role of the judge? What rights of moral independence do people have? When, if ever, is it permissible to kill people as punishment? What is free speech about? And then Scalia says it's American law that counts and that's all. That's mysterious. We're not talking about precedent. We're taking about sensitive people of the same general intellectual background as ours facing the same issues we face and our listening to what they have to say."

## A PATRIOT AND A PHILOSOPHER

John Kerry's poll numbers were dropping when we talked, and Dworkin's election anxiety was apparent. He said he was troubled by the role religion was playing in President Bush's campaign and by what he called the rise of "messianic anti-intellectualism" in American public life.

Yet it bothers Dworkin that his English friends are reflexively anti-American. "I have a maudlin sense that we're the best," he said of his home country. "And maybe also the worst, but don't forget the best. In the last century, America was responsible for an awful lot of good ideas politically that have been copied around the world. Not least among them a Constitution with individual rights in it. And there's a generation of postwar Americans who I think were very good international public servants."

"There was a period, and maybe there will be again in America," he continued, "when you could actually talk about ideas of justice. You didn't have to say only, 'We're helping the middle class where the votes are.' The word justice is very rarely mentioned in our political diction now."

The wind had mostly died down, to my relief, and the afternoon grew dim. We drove to the little airport. On the way home, I had a beer and read magazines. All the talk had left me shell-shocked but now intimidated in a different way, not by erudition or theory but by the force of a large, cogent and complete mind.

In a conversation a few weeks later, Sager told me that Dworkin can have this effect on people. “I went through a period when I found Ronnie so astonishingly facile and intimidating that I was probably repressed by that for a while,” Sager said.

Dworkin was in the United States in the spring, giving a series of lectures at Princeton whose title, “Is Democracy Possible Here?” reflected his post-election pessimism. Back in London in the middle of May, he gave me a quick summary over the phone. Worry had turned into something more vivid. He said he feared that the very rich and the religious right had established a pernicious alliance.

“I don’t think it’s yet time to say we are in a new dark age,” he said. “But the ambitions of the religious right are very grand. They want to take control of the courts and of the schools. It’s very dangerous.”

The United States was founded as “a tolerant religious state.” Over time, “we have moved toward a different idea—a tolerant secular state. Now, the plan is to bring us back to a tolerant religious state, which is dangerous, because it’s unstable. It can so easily become an intolerant one.”

His effortless *précis* of aspects of his Princeton lectures reminded me of a story Nagel had told me about a lecture Dworkin gave at Stanford some years ago. “The president of the university [Donald Kennedy] introduced him and sat down in the front row,” Nagel recalled, “and Dworkin stood up and gave a beautifully constructed 50- minute lecture. After it was over, the president got up again and explained that he had inadvertently picked up Dworkin’s detailed lecture notes from the lectern after introducing him, but discovered this only after Dworkin was launched, and hadn’t wanted to interrupt by returning them unless he faltered—which, of course, he didn’t.”

■ *Adam Liptak is the national legal correspondent at the New York Times.*



*Pancake Planning: Thomas Nagel and Ronald Dworkin discuss the details of their super-caffeinated colloquium.*



*Talking Points: The erudite Dworkin is never at a loss for words, whatever the setting.*



wedding day, 1958.



Playing ball with his son, Anthony, outside Trumbull College at Yale in the late 1960s.





*Smooth Sailing: Dworkin relaxes on Martha's Vineyard last summer.*



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